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**DIRECTIVE BY THE MINISTER OF EMPLOYMENT AND LABOUR IN TERMS OF REGULATION 10(8)
ISSUED 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)**

As published in Government Notice No. 215 published in Government Gazette No. 43161 of 26 March 2020,

and amended by Government Notice No. 240 published in Government Gazette No. 43216 of 8 April 2020.

I, Thembelani Waltermade Nxesi, the Minister of Employment and Labour, acting in terms of Regulation 10 (8) of the Regulations issued 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 amend the Directive that I issued in terms of Regulation 10(8) of the Regulations issued 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) as set out in the Schedule.

SCHEDULE

PREAMBLE

The President has on the 15 March 2020 declared the Covid -19 pandemic a National Disaster and announced several extraordinary measures to combat this grave public health emergency. The National Disaster has been declared in terms of the National Disaster Act, 2002 (Act No. 57 of 2002) ("the Act"). As a result of this declaration, the Minister of Cooperative Governance (COGTA) has made Regulations in terms of section 27 (2) of the Act. In terms of Regulation 10(8), the Minister empowers various Ministers to issue Directives with regard to the National Disaster in respect of matters falling within their respective mandates.

On the 23rd March 2020, the President announced the national lockdown in order to curb the spread of the Covid -19.

In view of the declaration of the National Disaster, in terms of Regulation 10(8), the Minister of Employment and Labour has issued a Directive called Covid19 Temporary Employee / Employer Relief Scheme (C19 TERS).

During this period of lockdown, companies will have to shut down and employees laid off temporarily. This means that employees are compelled to take leave, which is not out of choice. We therefore anticipate that employees may lose income. Employers are encouraged to continue to pay employees, but where this is not economically possible; we have created a special benefit under the Unemployment Insurance Fund as per the Directive Covid -19 Temporary Employee / Employer Relief Scheme.

1. Definitions

1.1. In these Directives, unless the context otherwise indicates –

- 1.1.1. "**UI Act**" means the Unemployment Insurance Act, 2001 (Act No. 63 of 2001) as amended and any word or expression to which the meaning has been assigned in the Act has that meaning;
- 1.1.2. "**COVID -19**" means the 2019 coronavirus (SARSCOV2/COVID-19);
- 1.1.3. "**COVID -19 National Disaster**" means a national disaster relating to the Covid -19 pandemic declared in Government Notice No. 313 of Government Gazette No. 42096 on 15 March 2020;
- 1.1.4. "**Quarantine**" means separating a symptomatic individual potentially exposed to a disease from nonexposed individuals in such a manner so as to prevent possible spread infection or contamination;
- 1.1.5. "**Covid -19 temporary employee / employer relief scheme**" means a scheme established to compensate employees who have lost income due to Covid -19;
- 1.1.6. "**Scheme**" means the Covid-19 temporary relief scheme; and¹
- 1.1.7. "**temporary lay -off**" means a reduction in work following a temporary closure of business operations, whether total or partial, due to Covid -19 pandemic for the period of the National Disaster.²

¹ Inserted by GN240 in GG43216 of 8 April 2020

² Amended by GN240 in GG43216 of 8 April 2020

2. Purpose

2.1. The purpose of this Directive is –

2.1.1. To make provision for the –

- (a) Payment of benefits to the Contributors who have lost income due to Covid -19 pandemic;
- (b) Minimise economic impact of loss of employment because of the Covid -19 pandemic;
- (c) Avoid contact and contain the spread of Covid -19 during the process of application for benefit;
- (d) Establish the Temporary Employee / Employer Relief Scheme and set out the application process for benefits of the Covid -19 pandemic and to alleviate economic impact of Covid -19;

2.1.2. to make provision for online applications for benefits in order to avoid contact during the national disaster period.

3. Covid -19 Employee | Employer Temporary Relief Scheme (C19TERS)

3.1. 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.³

3.2. The benefit shall be de- linked from the UIF's normal benefits and therefore the normal rule that for every 4 (four) days worked, the employee accumulates a one day credit and the maximum credit days payable is 365 for every 4 (four) years will not apply.

3.3. The benefits will only pay for the cost of salary for the employees during the temporary closure of the business operations.

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.⁴

3.5. Should an employee's income determine in terms of the income replacement sliding scale fall below R3500, the employee will be paid a replacement income equal to that amount.⁵

3.6. 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.^{6 7}

3.7. For the company to qualify for the temporary financial relief scheme, it must satisfy the following requirements –

3.7.1. The company must be registered with the UIF;

3.7.2. The company must comply with the application procedure for the financial relief scheme; and

3.7.3. The company's closure must be directly linked to the Covid -19 pandemic.

3.8. –⁸

3.8.1. An employer whose employees are entitled to receive covid-19 benefits provided by the Unemployment Insurance Fund during the period of lockdown from a bargaining council may not make an application in terms of the Scheme and the employees of

³ Amended by GN240 in GG43216 of 8 April 2020

⁴ Amended by GN240 in GG43216 of 8 April 2020

⁵ Amended by GN240 in GG43216 of 8 April 2020

⁶ Refer to sections 12 and 13 of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001), see attached Annexure A as well as Schedules 2 and 3 thereof attached as Annexures B and C respectively

⁷ Amended by GN240 in GG43216 of 8 April 2020

⁸ Inserted by GN240 in GG43216 of 8 April 2020

that employer may not receive any payment in terms of the Scheme than through the bargaining council.

3.8.2. The restriction in clause 3.8.1 only applies if –

- (a) the parties to the bargaining council have concluded a collective agreement that-
 - (i) has been extended by the Minister of Employment and Labour in terms of section 32 of the Labour Relations Act, 1995 (Act No. 66 of 1995); and
 - (ii) provides for the disbursement of funds received from the Unemployment Insurance Fund to provide covid-19 benefits to employees bound by the collective agreement during the period of lock-down; and
- (b) the bargaining council has concluded a memorandum of agreement with the Fund for the council to disburse covid-19 benefits on behalf of the Fund to –
 - (i) the employees who fall within the scope of the collective agreement; and
 - (ii) if authorised by the memorandum of agreement, any other employees in a sector identified in the agreement, whether or not they fall within the registered scope of the bargaining council.

4. Illness benefit

- 4.1. Where an employee is in quarantine for 14 days due to Covid-19 pandemic, the employee shall qualify for illness benefit.
- 4.2. Confirmation from both the employer and the employee must be submitted together with the application as a proof that the employee was in an agreed pre- cautionary self - quarantine for 14 days.
- 4.3. In this instance, the confirmation letters from the employer and employee shall suffice.
- 4.4. Should an employee be quarantined for more than 14 days, a medical certificate from a medical practitioner must be submitted together with continuation form for payment.

5. Application procedure

- 5.1. The employers shall apply by reporting their closure to email box Covid19tersa@labour.gov.za and there shall be an automatic response outlining the application process.
- 5.2. The employer shall be required to furnish the Unemployment Insurance Fund with the following completed documents:
 - 5.2.1. Letter of authority from the company;
 - 5.2.2. Signed memorandum of agreement from the employer or bargaining council with the UIF, or written or electronic confirmation of acceptance by an employer or bargaining council of the terms and conditions of the scheme provided to the employer or bargaining council or published in writing by the UIF.⁹
- 5.3. Subject to the amount of the benefit contemplated in clause 3.6, an employee may only receive covid-19 benefits in terms of the Directive if the total 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.¹⁰
- 5.4. All amounts paid by or for the UIF to employers or Bargaining Council(s) under the terms of the Scheme shall be utilized solely for the purposes of the Scheme and for no other purpose. 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

⁹ Amended by GN240 in GG43216 of 8 April 2020

¹⁰ Amended by GN240 in GG43216 of 8 April 2020

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.¹¹

6. Short title

6.1. This Directive is called the "Covid -19 Temporary Relief Scheme, 2020 ".

7. Commencement

7.1. This Directive shall commence immediately from the date of publication by Minister of Employment and Labour notice in the Gazette.

7.2. This Directive remains in operation for a period of 3 (three) months or until they are withdrawn by the Minister, whichever comes first.

¹¹ Inserted by GN240 in GG43216 of 8 April 2020

ANNEXURE A

Sections 12 and 13 of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001)

12. Right to benefits

- (1) Subject to the provisions of this Act, a contributor or a dependant, as the case may be, is entitled to the following benefits:
 - (a) Unemployment benefits contemplated in Part B of this Chapter;
 - (b) illness benefits contemplated in Part C of this Chapter;
 - (c) maternity benefits contemplated in Part D of this Chapter;
 - (d) adoption benefits contemplated in Part E of this Chapter; and
 - (e) dependant's benefits contemplated in Part F of this Chapter.
- (1A) A contributor who is employed as a domestic worker by more than one employer and whose employment is terminated by one or more employers is, despite still being employed, entitled to benefits in terms of this Act if the contributors total income falls below the benefit level that the contributor would have received if he or she had become wholly unemployed.¹²
- (1B) A contributor employed in any sector who loses his or her income due to reduced working time, despite still being employed, is entitled to benefits if the contributor's total income falls below the benefit level that the contributor would have received if he or she had become wholly unemployed, subject to that contributor having enough credits.¹³
- (2) An example of the scale of benefits to which a contributor is entitled is contained in Schedule 3, as calculated from Schedule 2.
- (3) –
 - (a) The Minister may, with the concurrence of the Minister of Finance, by notice in the Gazette and subject to subsection (4), amend the scale of benefits contained in Schedule 3 in accordance with a maximum monthly rate of remuneration of a skilled manual labourer as determined by the Social Security (Minimum Standards) Convention, 1953 (Convention No. 102), of the International Labour Organisation.
 - (b) The scale of benefits contemplated in paragraph (a) may vary between a maximum rate of 60% of remuneration for lower income contributors and a lower rate of remuneration for higher income contributors as will be determined by thresholds as set out in Schedule 3.
 - (c) For the purposes of Part D, maternity benefits must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold set in terms of paragraph (a).¹⁴
 - (d) Subject to section 13(3), the benefit for-¹⁵
 - (i) the first 238 days of benefits is paid at the income replacement rate set in terms of paragraph (b); and
 - (ii) the remainder of credits is paid at a flat rate of 20.
- (4) When acting in accordance with subsection (3), the Minister must-
 - (a) consult with the Board and must have regard to budgeted-

¹² Inserted by GN1674 in GG25721 of 14 November 2003

¹³ Inserted by GN35 in GG40557 of 19 January 2017

¹⁴ Inserted by GN35 in GG40557 of 19 January 2017

¹⁵ Inserted by GN35 in GG40557 of 19 January 2017

- (i) contribution and investment income from the Fund;
 - (ii) payment of benefits;
 - (iii) provision to meet expenses related to administering this Act; and
 - (iv) provision for contingency reserves; and the context.
- (b) comply with the procedure set out in section 55, with the changes required by the context.

13. Calculation of benefits

- (1) Subject to subsection (2), for purposes of calculating the benefits payable to a contributor, the daily rate of remuneration of a contributor, subject to the prescribed maximum, must be determined-
- (a) if paid monthly, by multiplying the monthly remuneration by 12 and dividing it by 365;
 - (b) if paid weekly, by multiplying the weekly remuneration by 52 and dividing it by 365.
- (2) If the contributor's remuneration fluctuates significantly from period to period, the calculation must be based on the average remuneration of that contributor over the previous six months.
- (3) ⁻¹⁶
- (a) Subject to subsection (5), a contributor's entitlement to benefits in terms of this Chapter accrues at a rate of one day's benefit for every completed five days of employment as a contributor subject to a maximum accrual of 365 days benefit in the four year period immediately preceding the day after the date of ending of the period of employment in terms of this Chapter.
 - (b) Unemployment benefits must be paid to the unemployed contributor regardless of whether or not the contributor has received benefits within that four year cycle, if the contributor has credits.
- (4) For purposes of determining completed days of employment as contemplated in subsection (3), the period includes-
- (a) the day that a contributor commenced employment and runs up to and including the day on which employment was terminated; and
 - (b) any period in respect of which-
 - (i) an employee was paid remuneration in lieu of notice;
 - (ii) a merchant seaman received remuneration in terms of section 140 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951).
- (5) ⁻¹⁷
- (a) The days of benefits that a contributor is entitled to in terms of subsection (3) may not be reduced by the payment of maternity benefits in terms of Part D of this Chapter.¹⁸
 - (b) The Payment of maternity benefits may not affect the payment of unemployment benefits.
- (6) If an application for benefits is made within the four year cycle of a previous claim, the Fund must subtract the number of days in respect of which benefits have already been paid in that cycle.

¹⁶ Amended by GN35 in GG40557 of 19 January 2017

¹⁷ Amended by GN35 in GG40557 of 19 January 2017

ANNEXURE B

**Schedule 2 of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001)
MATHEMATICAL CALCULATION OF CONTRIBUTOR'S ENTITLEMENT**

The benefit to which a contributor is entitled is calculated in one of two ways, depending on a contributor's income prior to becoming unemployed:

1. Contributors who earned **less** than a particular amount (known as the "benefit transition income level") are entitled to a percentage of their previous pay.
2. Contributors who earned more than the benefit transition income level are entitled to a flat benefit, equal to the entitlement of a contributor who was previously paid at the benefit transition income level.

The benefit transition income level

The 1953 International Labour Organisation Convention (Convention No. 102) stipulates that the wage of a skilled manual worker should determine the appropriate income level at which to set a ceiling for membership of a social insurance scheme. Over the years, South Africa's Unemployment Insurance scheme has roughly kept pace with this guideline. The benefit transition income level is therefore linked to this rate.

The current income ceiling is R8 099 per month. This will become the initial benefit transition income level for the purposes of this Act. However, in terms of section 12(3)(a), the Minister may change the benefit transition income level from time to time to reflect changing patterns of income.

Contributors who previously earned less than the benefit transition income level

For contributors who earned less than the benefit transition income level, entitlement to benefit is earnings-related. A contributor's entitlement is calculated according to the following formula:

Benefit = Daily Income * IRR

where IRR is the Income Replacement Rate corresponding to the contributor's daily income.

Daily Income

If a contributor was paid weekly, daily income is the weekly rate of pay divided by 7.

If a contributor was paid fortnightly, daily income is the fortnightly rate of pay divided by 14.

If a contributor was paid monthly, daily income is the monthly rate of pay multiplied by 12, then divided by 365.

Income Replacement Rate¹⁹

The Income Replacement Rate (IRR) determines the percentage of a contributor's previous income to which the contributor is entitled in the form of benefits. The IRR is a variable, so it defines a sliding scale. A contributor who previously earned a low wage is entitled to receive benefits representing a larger proportion of her or his previous income than a contributor who previously earned a higher wage.

The IRR is at its maximum when income equals zero, and it reaches its minimum where income is equal to the benefit transition income level. The maximum IRR is currently set at 60%. The minimum IRR is currently set at 38%. However, the Minister may, in consultation with NEDLAC vary the maximum income and flat replacement rate in terms of section 12(3)(b) but cannot reduce the minimum IRR to any percentage below 38. The Minister may from time to time after consultation with Parliament, vary the IRR and the benefit period by regulations.

Using current values, the IRR can be calculated according to the following formula:

$$IRR = 29.2 + (99779.68 / (3239.6 + Y_i))$$

¹⁹ Amended by GN35 in GG40557 of 19 January 2017

where Y_i represents a contributor's **monthly** rate of income. (Consistency of units is essential. To calculate IRR from daily or weekly rates of pay, please refer to the more detailed explanation of the IRR formula in the technical note below.)

Contributors who previously earned more than the benefit transition income level

Contributors who earned more than the benefit transition income level are entitled to a flat benefit equal to the benefit transition income level multiplied by the minimum IRR.

At the current benefit transition income level of R8 099 per month, this works out to R 101.18 per day:

$$\text{Daily income} = (8099 * 12) / 365 = 266.2685$$

$$\text{IRR} = 38\% \text{ or } 0.38$$

$$\text{Benefit} = 266.2685 * 0.38 = 101.18$$

Duration of benefits

In terms of section 13(3), a contributor is eligible to receive one day's benefit for every six completed days of employment, up to a maximum of 238 days (34 weeks). A contributor will therefore be eligible to claim benefits for the maximum duration after being continuously employed for four years. If a contributor has already drawn benefits (other than maternity benefits) in terms of this Act in the preceding four years, the number of days for which the contributor is eligible to claim benefits will be reduced accordingly.

To calculate the number of days of benefits to which a contributor is entitled:

1. Determine the total number of days that the contributor was employed (and contributing) in the four-year period immediately preceding the date of application for benefits.
2. Divide the total number of days by 6, disregarding any remainder or fractional portion of the result.
3. Subtract the number of days (if any) for which the contributor claimed benefits (other than maternity benefits) in terms of this Act during the preceding four years.

Amount of benefit payment

The benefit payment to which a contributor is entitled in any given period shall be the amount of the benefit entitlement multiplied by the number of days for which the contributor is eligible to receive benefits during the payment period.

Technical note on the Calculation of IRR

The sliding scale for the Income Replacement Rate (IRR) is represented by a portion of the curve (rectangular hyperbola) produced by a graph of the function $y = 1/x$, where the y axis represents the IRR and the x axis represents income. However, in order to associate this curve with values that are meaningful for this purpose, it is necessary to apply adjusting formulae.

Calculating the IRR associated with any given level of income below the benefit transition income level can be done in three steps:

1. The rate of income is transformed into a corresponding value on the x axis (x_i). The formula for this is:

$$Y_i (x_i - x_1) = Y_{LRR} / (x_2 - x_1) \quad (1)$$

where:

Y_i is the contributor's rate of income;

Y_{LRR} is the benefit transition income level; and

x_1 and x_2 are constants that determine the portion of the curve that is used to calculate IRR.

The current values of the parameters Y_i , x_1 and x_2 are:

$Y_i = R8\ 099$ per month

$x_1 = 2$

$x_2 = 7$

Using these values, expression (1) can be simplified to:

$$x_i = 2 + (Y_i / 1619.8) \quad (1a)$$

where Y_i is expressed as a monthly rate of income. [It is important to ensure that both the contributor's rate of income (Y_i) and the benefit transition income level (Y_{LRR}) are expressed in the same units-monthly, weekly, or daily.]

2. The y values corresponding to the x values are calculated using the general formula:

$$y = 1/x \quad (2)$$

thus:

$$y_1 = 1/x_1$$

$$y_2 = 1/x_2$$

$$y_i = 1/x_i$$

3. The y_i value is then converted to the corresponding IRR. The formula for this is:

$$IRR = LRR + (y_i - y_2) (URR - LRR) / (y_1 - y_2) \quad (3)$$

where:

IRR is the income replacement rate;

LRR is the lower (minimum) income replacement rate; and

URR is the upper (maximum) income replacement rate.

The current values of the parameters LRR, URR, y_1 and y_2 are:

LRR = 38%

URR = 60%

$y_1 = 1/2$

$y_2 = 1/7$

Using these values, expression (3) can be simplified to:

$$IRR = 61.6y_i + 29.2 \quad (3a)$$

ANNEXURE B

Schedule 3 of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001)
SCALE OF CONTRIBUTORS ENTITLEMENT TO BENEFITS
(Section 12(2))

- (1) Table One is the scale of benefits to which a contributor may be entitled. A contributor's monthly rate of remuneration is set out in column 1. The percentage of the contributor's monthly income that will be paid as a benefit is set out in column 2. The actual benefit payable in Rand terms is set out in column 3.
- (2) Benefits below the transitional income level are earnings-related and fall as a proportion of income as income rises.
- (3) Contributors and employers of contributors earning above the income threshold of R97 188 per annum shall contribute 1 % of the threshold and such income contributors shall receive benefits payable at this threshold level.

Tables to illustrate benefits at various earnings levels

Based on a transition income of R97 188 Der annum

The various amounts on these tables are calculated in terms of the equation in Schedule 2

IRR = Income replacement rate

Approximate benefits payable on monthly basis²⁰

Income	IRR	UI Benefit
R 150.00	58.64%	R 87.96
R 300.00	57.39%	R 172.17
R 500.00	55.88%	R 279.41
R 700.00	54.53%	R 381.69
R 1 000.00	52.74%	R 527.35
R 1 500.00	50.25%	R 753.79
R 2 000.00	48.24%	R 964.87
R 3 000.00	45.19%	R 1 355.74
R 3 075.57	45.00%	R 1 384.01
R 4 000.00	42.98%	R 1 719.30
R 5 000.00	41.38%	R 2 065.49
R 6 000.00	40.00%	R 2 399.95
R 7 410.00	38.57%	R 2 857.99
R 8 099.00	38.00%	R 3 077.62
R 10 000.00	30.78%	R 3 077.62

²⁰ Tables modified from original Schedule to reflect Rand (R) and Percentage (%) Symbols for ease of reference

Approximate benefits payable on weekly basis²¹

Income	IRR	UI Benefit
R 34.62	58.64%	R 20.30
R 69.23	57.39%	R 39.73
R 115.38	55.88%	R 64.48
R 161.54	54.53%	R 88.08
R 230.77	52.74%	R 121.70
R 346.15	50.25%	R 173.95
R 461.54	48.24%	R 222.66
R 692.31	45.19%	R 312.86
R 709.75	45.00%	R 319.39
R 923.08	42.98%	R 396.76
R 1 153.85	41.38%	R 476.65
R 1 384.62	40.00%	R 553.83
R 1 710.00	38.57%	R 659.54
R 1 869.00	38.00%	R 710.22
R 2 307.69	30.78%	R 710.22

Approximate benefits payable on daily basis²²

Income	IRR	UI Benefit
R 4.93	58.64%	R 2.89
R 9.86	57.39%	R 5.66
R 16.44	55.88%	R 9.19
R 23.01	54.53%	R 12.55
R 32.88	52.74%	R 17.34
R 49.32	50.25%	R 24.78
R 65.75	48.24%	R 31.72
R 98.63	45.19%	R 44.57
R 101.11	45.00%	R 45.50
R 131.51	42.98%	R 56.52
R 164.38	41.38%	R 67.91
R 197.26	40.00%	R 78.90
R 243.62	38.57%	R 93.96
R 266.27	38.00%	R 101.18
R 328.77	30.78%	R 101.18

The UI benefits payable in the tables will be paid for the duration of the benefits days that have been accrued by a contributor.

²¹ Tables modified from original Schedule to reflect Rand (R) and Percentage (%) Symbols for ease of reference

²² Tables modified from original Schedule to reflect Rand (R) and Percentage (%) Symbols for ease of reference