

COVID-19 – SALARY PAYMENTS, RELIEF PAYMENTS AND UIF CLAIMS DURING LOCK DOWN

By Johanette Rheeder

Attorney

As a result of the international and local effect of COVID – 19 on the businesses in South Africa, employers have to consider how to counter-act the result of the COVID – 19 crisis and state of Disaster, as promulgated by the South African Government. Many employers have been caught off guard by the National lock down and are faced with either a complete lock down of its business or having to lay off employees or place them on short time.

Employers and employees alike are seeking assistance and guidance as to how to survive the COVID-19 pandemic as a business, individual employee and family.

Herewith are some guidance as to the benefits employees and employers can consider.

UNEMPLOYMENT INSURANCE AMENDMENT ACT 2016-TEMPORARY LAY OFF BENEFITS

Government has under the UIAA of 2016 declared that some reprieve will be allowed for those employees who lose income as a result of reduced working times. (called short time loss of income). It appears that bulk applications for employees can be processed by employers under UIF for this benefit, with a letter to the Fund from the employer. This measure was introduced to lessen the burden of thousands of individual applications by employees with the Fund.

Section 12 of the UIA of 2002 is amended by adding subsection (1B) to the principal UIA which determine as follows:

“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.”

Therefore, the section requires the following for an employee to receive benefits:

- loss of income;
- reduced working time (lay off or short time);
- the employee falling below the contributor level of the UIA and the employee having enough credits.

In the even of the employer paying the employees their full remuneration whilst under lock-down, the employees will suffer no loss of income and those employees cannot claim under section 12(1)B of the UIAA. Only once the employer place the employees on unpaid short time or lay-off, will the employee qualify for this benefit.

Furthermore, only employees who qualify below the contributor level and who has enough credits will be compensated for loss of income.

A second option would be for the employer and employee to claim under the Relief Scheme. Employees and employers will not be able to claim both.

COVID-19 TEMPORARY EMPLOYEE/EMPLOYER RELIEF SCHEME^[1] (TERS 19)

In Government Gazette 43161 of 26 March 2020, Reg 2020, the Minister of Employment and Labour promulgated, in terms of Reg 10(8) of section 27(2) of the Disaster Management Act 57 of 2002^[2], a Directive (Directive 2020) with the following terms:

“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”.

Employers are therefore entitled to place employees on leave, before considering lay-off or short time without benefit. Employers who cannot afford to pay employees, therefore where it is not economically possible, can claim from the Relief fund, which is based on the UIF benefit that accrues to employees. (Proof of financial distress may be required by the Fund).

Employees are entitled to the following as per the Easy Aid document and the Directive 2020:

1. Illness benefits through COIDA, (not sick leave) and death benefits;
2. Self-quarantine or employer forced quarantine for 14 days – with the consent of the employer; The employer and the employee must sign a letter that the employer consent. The letter will act as a sick note for the first 14 days, thereafter the employee must deliver a sick note from a medical practitioner^[3].
3. Reduced work time (UIAA^[4]); and

4. Unemployment and Temporary Employer/Employee Relief benefits (TERS - 19)(available to the employer and the employee, however the benefit should be paid to the employee, as it is funded by UIF).

These benefits (TERS-19) are available to employees and employers in circumstances of forced lock down^[5] for financial assistance from the UIF. An application must be made to the UIF and key documents are required which include a letter of authority, a MOA between the employer and the UIF or Bargaining Council, a prescribed template with certain information of the employer, payroll evidence of the last three months and confirmation of bank details.

The benefit amount will be calculated by the UIF, the total amount to be transferred to the employer or Bargaining Council, as per agreement with the UIF.

The following stipulations of the Directive 2020 should be considered as well:

1. To qualify, an employer must;-
2. as a direct result of Covid -19 pandemic, close its operations for a 3 (three) months or lesser period; and
3. the employer must suffer financial distress.
4. 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. The benefits will only pay for the cost of salary for the employees during the temporary closure of the business operations.
5. The salary benefits will be capped to a maximum amount of R17 712, 00 per month, per employee (statutory threshold of the BCEA, section 6(3)) and an employee will be paid in terms of the income replacement rate sliding scale (38 % -60 %), as provided in the UI Act.
6. Should an employee's income determined in terms of the income replacement sliding scale, and falls below the minimum wage of the sector concerned, the employee will be paid a replacement income equal to minimum wage of the sector concerned. Qualifying employees will receive a benefit calculated in terms of sections 12 and 13 of the UI Act, provided that an employee shall receive a benefit of no less than the sector specific minimum wage.
7. For the company to qualify for the temporary financial relief scheme, it must satisfy the following requirements; –
 1. The company must be registered with the UIF;
 2. The company must comply with the application procedure for the financial relief scheme; and
 3. The company's closure must be directly linked to the COVID -19 pandemic.

The MOA (Memorandum of agreement) with the UIF, specifically prohibits the payment of the salary of the employees to the employer and requires the employer to set up a separate bank account to which the funds must be paid by the UIF. Payment to employees must take place within 5 days of payment by the UIF. The funds must be audited and kept separate from the employer's bank accounts and records.

If the employer did not shut down completely, as some employees are still working and/or working from home, it is questionable whether the employees will qualify for benefits. If the employer is paying the employees their full salary, the benefits will also not accrue as per the Relief fund.

Employers are implored upon to pay employees, deduct leave and only in the case of economic hardship, to lay off employees or place them on short time without pay. If this is the case and the employer can prove hardship to the UIF, then the employees will be entitled to payment from the UIF, up to the BCEA section 6(3) threshold per employee.

The employer may administer payment to employees as per the MOU with the UIF, however, will not be able to retain or deduct the funds from the employee.

Johanette Rheeder Inc.

For questions and advice: johanette@jrattorneys.co.za

^[1] See COVID 19 TERS EASY AID as published by the DOL, attached hereto for ease of reference.

^[2] See Directive of 2020 attached for ease of reference.

^[3] Regulation of 26 March, Directive 2020, clause 4.

^[4] *Supra*

^[5] "temporary lay -off" is defined by the Regulation to mean a **temporary closure of business operations due to Covid -19 pandemic for the period of the National Disaster.**