COVID-19 BENEFITS: AMENDED DIRECTIVES

In an effort to clear up some confusion regarding the COVID-19 Temporary Employer/Employee Relief Scheme (TERS) benefits, the Minister of Employment and Labour signed an amended Directive on 16 April and a Correction Notice on 20 April 2020 respectively.

It is now clear that employees who were required to take **annual leave** during the period that the employer's business was closed (either completely or partially) may claim the COVID-19 TERS benefit. Annual leave days are therefore regarded as no income days for purposes of the benefit. An employer who receives the benefit on behalf of its employees may retain the amount, but must then credit the employee concerned with the proportionate entitlement to annual leave.

The Correction Notice of 20 April 2020 deleted the reference to section 12 of the Unemployment Insurance Act in clause 3.6 of the Directive. This enables employees who receive remuneration in excess of R17,712 per month and whose employers apply **top up** to claim the benefit. By way of example:

> The employee earns R20,000 per month. In terms of the Directive, benefits are calculated as a percentage (38%-60%) of the employee's salary. However, the salary at which benefits are calculated is capped at R17,712 per month. The employee in this example would accordingly only be able to qualify for the maximum benefit of R6,730.56.
>
> Assume that the employer pays the employee R10,000 during the period of closure.
>
> The amount paid by the employer and the amount of the benefit would be around R16,730.56. This is less than the employee's normal remuneration of R20,000 and the employee will accordingly qualify for the benefit.
>
> Assume that the employer pays R18,000. In this case, the employee would only receive R2,000 as the benefit, so as to ensure that the employee does not receive more than 100% of her/his normal remuneration of R20,000.
>
> Assume that the employer pays R20,000, i.e. the employee's normal remuneration, and that the employee is not required to take annual leave. In this case, the employee will not receive a TERS benefit.

On the wording of the Directive prior to this correction, the comparison was made vis-à-vis the threshold amount of R17,712 (and not the employee's actual remuneration). Thus, if the employer's top up and the benefit exceeded the amount of R17,712, the employee would not qualify for a TERS benefit. We are

informed that the UIF will automatically re-calculate the benefits of employees whose applications were rejected on this basis.

A revised formula which now incorporates this principle can now be found in the revised calculator. A copy of it can be found at https://www.businessforsa.org/wp-content/uploads/2020/04/TERS-calculatorfinal.pdf

Employers whose operations are closed and who are applying the no work no pay principle, or who are requiring their employees to take leave, or who are paying only a portion of their employees' remuneration, are urged to apply for the COVID-19 TERS benefit on behalf of their employees. In these circumstances, the employees are not eligible for unemployment benefits. This is because their employment has not yet been terminated. Only if they are in fact dismissed, will employees qualify for unemployment benefits.

We are informed that where the application has been incorrectly made for unemployment benefits, the UIF may be approached to correctly classify the benefits as COVID-19 TERS benefits, and in these circumstances, the employee's credits will be reinstated.

B4SA Labour Workstream

27 April 2020