



21 August 2020

Dear Employer / Statutory Body / Bargaining Council / Organisation

RE: TERS EXTENSION – LOCKDOWN PERIOD 1 JULY – 15 AUGUST 2020

Following the first circulation of the explanatory notes and resulting questions, please note the updated Explanatory Note which confirms that employees who experience a temporary pay cut due operational or economic requirements qualify for Covid19 temporary employer / employee relief scheme during the extension period.

Please see updated (highlighted) notes below:

- (a) not permitted to commence operations under the Disaster Management Regulations;**
- (b) unable to make alternative arrangements for vulnerable workers such as working from home or taking special measures under the OHS Direction to protect them; or**
- (c) unable to make use of their services because of operational requirements caused by compliance with the National Disaster Regulations and Directions such as rostering, staggering working hours, short time, the introduction of shift systems *and the temporary reduction in the employee's ordinary remuneration.***

It should be noted that all applications are subject to the MOA signed with the UIF which requires Employers to ensure accurate record keeping, including supporting documentation that may be required by auditors to assess eligibility to apply for – and receive – TERS benefits.

Further, the Explanatory Note has been expanded to provide greater clarity on the determination of “remuneration” for the purposes of submission to UIF for calculation of benefits.

- It is important to recognise that the wording proposed in respect of employer payments refers only to remuneration for work performed. In this regard, remuneration is defined in the Direction with reference to the definition of the term in the BCEA. The relevant provisions of the BCEA are attached. Remuneration does not include any other payments whether a gratuitous ‘topping up’ or leave or a loan.



Meaning of remuneration under the BCEA

Section 1

“remuneration” means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and “remunerate” has a corresponding meaning;

Government Notice No. 691 in Government Gazette 24889 of 23 May 2003

SCHEDULE

CALCULATION OF EMPLOYEE’S REMUNERATION IN TERMS OF SECTION 35(5) OF THE BASIC CONDITIONS OF EMPLOYMENT ACT, 1997 (ACT 75 OF 1997)

1. The following payments are included in an employee’s remuneration for the purposes of calculating pay for annual leave in terms of section 21, payment instead of notice in terms of section 38 and severance pay in terms of section 41 –

- (a) Housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind:
- (b) Car allowance or provision of a car, except to the extent that the car is provided to enable the employee to work:
- (c) Any cash payments made to an employee, except those listed as exclusions in terms of this schedule:
- (d) Any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule:
- (e) Employer’s contributions to medical aid, pension, provident fund or similar schemes:
- (f) Employer’s contributions to funeral or death benefit schemes.

2. The following items do not form part of remuneration for the purpose of these calculations –



- (a) Any cash payment or payment in kind provided to enable the employee to work (for example, an equipment, tool or similar allowance or the provision transport or the payment of a transport allowance to enable the employee to travel to and from work);
- (b) A relocation allowance;
- (c) Gratuities (for example, tips received from customers) and gifts from the employer;
- (d) Share incentive schemes;
- (e) Discretionary payments not related to an employee's hours of work or performance (for example, a discretionary profit-sharing scheme);
- (f) An entertainment allowance;
- (g) An education or schooling allowance.

3. The value of payments in kind must be determined as follows –

- (a) a value agreed to in either a contract of employment or collective agreement, provided that the agreed value may not be less than the cost to the employer of providing the payment in kind; or
- (b) the cost to the employer of providing the payment in kind.

4. An employee is not entitled to a payment or the cash value of a payment in kind as part of remuneration if –

- (a) the employee received the payment or enjoyed, or was entitled to enjoy, the payment in kind during the relevant period; or
- (b) in the case of a contribution to a fund or scheme that forms part of remuneration, the employer paid the contribution in respect of the relevant period.

5. This schedule only applies to pay for annual leave accrued from the date of operation of this Schedule.

6. If a payment fluctuates, it must be calculated over a period of 13 weeks or, if the employee has been in employment for a shorter period, that period.

7. A payment received in a particular period in respect of a longer period (e.g. a thirteenth cheque) must be pro-rated.



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8. This Schedule only applies to the minimum payments that an employer is required to make in terms of the Basic Conditions of Employment Act, 1997.

Queries:

An updated Frequently Asked Questions (FAQ) will be uploaded to the website and TERS portal to guide Employers, Users and Employees to address any queries to enable processing and payment of claims.

Queries can also be addressed by contacting the Call Centre on 0800 030 007.

Please do not direct your enquiries to any other service other than what is stated.

Your understanding and co-operation is highly appreciated.

Regards

Unemployment Insurance Commissioner