

## EXPLANATORY MEMORANDUM ON THE NEW DRAFT TERS DIRECTION

- 1 The new direction seeks to support three categories of employees whose employers are-
  - (a) not permitted to commence operations either partially or in full 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;
  - (c) unable to make use of their services either fully or partially because of operational requirements caused by compliance with the Regulations and Directions such as rostering, staggering working hours, short time and the introduction of shift systems.
- 2 It incorporates the 26 March Directive, as amended, which expired on 27 June subject to a few changes. In essence, the Direction seeks to determine the benefits taking into account any remuneration earned. The principal reason is affordability given the increasing demands being made on an already stressed Unemployment Insurance Fund.
- 3 The changes are to clauses 3.5, 3.6 and 5.3 of the 26 March Directive. The new clauses are as follows:
  - 3.5 Subject to clauses 3.6 and 5.3, a qualifying employee will receive a benefit calculated in terms of section 13 (1) of the UI Act.
  - 3.6 Should the benefit calculated in clause 3.5 together with any remuneration earned fall below R3 500, the benefit will be increased to ensure that the employee receives R3 500.
  - 5.3 Subject to the amount of the benefit contemplated in clause 3.5, an employee may only receive covid-19 benefits in terms of the Directive if the total of the benefit together with any remuneration paid by the employer for work performed by the

employee in any period is not more than the remuneration that the employee would ordinarily have received for working during that period.”

4 The effect of these changes can be explained as follows:

- (a) If the remuneration earned plus the sliding scale benefit is less than the ordinary salary, the full benefit is paid (the effect of clause 3.5).

*Example:*

*If an employee's ordinary salary is R4 000, then the UIF sliding scale is R1 920. If the remuneration earned by the employee is R2 000, then the benefit = R1 920 (because the benefit plus the remuneration earned is less than the ordinary salary).*

- (b) If the remuneration earned plus the sliding scale benefit is less than R3 500 then the benefit will be increased to ensure that the employee receives R3 500 (the effect of clause 3.6).

*Example 1*

If a domestic worker's ordinary salary is R3 000 and the domestic worker receives no remuneration, then the benefit = R3 500.

*Example 2*

If an employee's ordinary salary is R4 000, then the UIF sliding scale is R1 920 and if the employee received no remuneration then the benefit = R3 500.

- (c) if the remuneration earned plus the sliding scale benefit is more than the ordinary salary, the benefit is reduced accordingly (the effect of clause 5.3)

*Example 1:*

If a domestic worker's ordinary salary is R3 000 and the domestic worker receives remuneration of R3 000, then the benefit = R500

*Example 2*

If an employee's ordinary salary is R20 000 then the UIF sliding scale is R6 800. If the remuneration earned by the employee is R15 000, then the benefit is R5 000 (because the total of the remuneration earned plus the sliding scale benefit will be more than the employee's ordinary salary)

5 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 to any other payments whether a gratuitous 'topping up' or leave or a loan.

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## 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.

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.