

REPUBLIC OF SOUTH AFRICA

UNEMPLOYMENT INSURANCE AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 25234 of 22 July 2003)
(The English text is the official text of the Bill)*

(MINISTER OF LABOUR)

[B 35—2003]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Unemployment Insurance Act, 2001, so as to define certain expressions and to amend or delete certain definitions; to exclude persons who receive a State pension from the application of the Act; to provide anew for the compilation and filing of a business plan; to extend the right to benefits to domestic workers who are employed by more than one employer; to extend the right to unemployment benefits to a domestic worker whose contract of employment is terminated by the death of his or her employer; to adjust the benefits payable to contributors in respect of illness, maternity and adoption; to provide for the establishment of regional appeals committees; and to provide anew for the settling of disputes relating to payment or non-payment of benefits; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 63 of 2001

1. Section 1 of the Unemployment Insurance Act, 2001 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion of the definition of “CCMA”;
- (b) by the insertion after the definition of “month” of the following definition:
“**‘National Appeals Committee’** means the appeals committee contemplated in section 50(2)(a)(i);”;
- (c) by the insertion after the definition of “public service” of the following definition:
“**‘regional appeals committee’** means a regional appeals committee established in terms of section 36A;”;
- (d) by the deletion of the definition of “seasonal worker”;
- (e) by the substitution for the definition of “this Act” of the following definition:
“**‘this Act’** includes any regulation [**made in terms of this Act**];”;
- (f) by the substitution for the definition of “Unemployment Insurance Contribution Act” of the following definition:
“**‘Unemployment Insurance Contribution Act’** means the Unemployment Insurance Contribution Act, 2002 (Act No. 4 of 2002);”.

Amendment of section 3 of Act 63 of 2001

2. Section 3 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs, respectively:
- “(b) employees [**who receive remuneration under a learnership agreement registered in terms**] under a contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998), and their employers; 5
- (c) [**employers and**] employees in the national and provincial spheres of government who are officers or employees as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and their employers;” 10
- (b) by the insertion in subsection (1) of the word “and” at the end of paragraph (d) and the addition to the said subsection of the following paragraph:
- “(e) persons who receive a monthly pension as contemplated in section 14(a)(i) and their employers.”; and 15
- (c) by the deletion of subsections (2) and (3).

Amendment of section 11 of Act 63 of 2001

3. Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 20
- “(2) (a) At the beginning of each financial year, the [**Commissioner**] Director-General must file a business plan, approved by the Minister, with the National Treasury.
- (b) The Commissioner [**Minister**] must compile the business plan, with the [**concurrence of the Director-General and the Commissioner, and they are to be assisted by**] assistance of the actuary and the Board.”. 25

Amendment of section 12 of Act 63 of 2001

4. Section 12 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:
- “(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 contributor’s total income falls below the benefit level that the contributor would have received if he or she had become wholly unemployed.”. 30

Amendment of section 13 of Act 63 of 2001 35

5. Section 13 of the principal Act is hereby amended by the addition of the following subsection:
- “(6) For the purposes of calculating the benefits of a contributor contemplated in section 12(1A), the total income derived from continued employment plus the amount of benefits calculated may not exceed the benefits that would have been paid if the contributor had become wholly unemployed.”. 40

Amendment of section 16 of Act 63 of 2001

6. Section 16 of the principal Act is hereby amended by the deletion in subsection (1)(a) of the word “or” at the end of subparagraph (ii), the addition of the word “or” at the end of subparagraph (iii) and the addition of the following subparagraph: 45
- “(iv) in the case of a domestic worker, the termination of the contributor’s contract of employment by the death of the employer of that contributor.”.

Amendment of section 21 of Act 63 of 2001

7. Section 21 of the principal Act is hereby amended by the deletion of subsection (1).

Amendment of section 24 of Act 63 of 2001

8. Section 24 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 27 of Act 63 of 2001

9. Section 27 of the principal Act is hereby amended by the deletion of subsection (3).

Insertion of section 36A in Act 63 of 2001

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10. The following section is hereby inserted in the principal Act after section 36:

“Establishment of regional appeals committees

36A. (1) The Minister must, after consultation with the Board, appoint a regional appeals committee for each region determined by the Minister.

(2) A regional appeals committee must be composed of at least—

- (a) one member and an alternate member to represent organised labour;
- (b) one member and an alternate member to represent organised business;
- (c) one member and an alternate member to represent organisations of community and development interests; and
- (d) one officer.

(3) Any person appointed to a regional appeals committee who is not in the full-time employment of the State must be paid remuneration and allowances determined by the Minister in terms of the Treasury Instructions issued by the National Treasury.”.

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Substitution of section 37 of Act 63 of 2001

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11. The following section is hereby substituted for section 37 of the principal Act:

“Disputes relating to payment or non-payment of benefits

37. (1) A person who is entitled to benefits in terms of this Act may appeal to **[the] a regional** appeals committee **[of the Board]** if that person is aggrieved by a decision of—

- (a) the Commissioner to suspend such person’s right to benefits; or
- (b) a claims officer relating to the payment or non-payment of benefits.

(2) A person who is dissatisfied with the decision of **[the] a regional** appeals committee may refer the matter **[for arbitration to the CCMA]** to the National Appeals Committee for a decision.

(3) A decision by the National Appeals Committee is final, subject to judicial review.

(4) For the purposes of an appeal in terms of this section—

- (a) the decisions of a regional appeals committee and those of the National Appeals Committee are determined by majority vote; and
- (b) a regional appeals committee or the National Appeals Committee, as the case may be, may, after considering an appeal, confirm or vary the decision in question, or rescind it and substitute the decision of the relevant regional appeals committee or the National Appeals Committee, as the case may be.”.

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Short title

12. This Act is called the Unemployment Insurance Amendment Act, 2003.

MEMORANDUM ON THE OBJECTS OF THE UNEMPLOYMENT INSURANCE AMENDMENT BILL, 2003

1.1 The Unemployment Insurance Act, 2001 (Act No. 63 of 2001) (“the Act”), came into effect on 1 April 2002. In terms of section 3(3)(a) of the Act the Minister of Labour (“the Minister”) appointed a task team to investigate and make recommendations regarding the administration of the Act in respect of domestic and seasonal workers.

1.2 The Task Team recommended that—

- (a) domestic workers with multiple employers should be considered partially unemployed and be eligible for benefits under the Act if, as a result of losing one or more but not all of their jobs, their total income falls below the benefit level they would have received if they had become wholly unemployed;
- (b) in respect of the inclusion of seasonal workers the position was that virtually all employers of seasonal workers would already be making payments to the Unemployment Insurance Fund (“the Fund”) in respect of their permanent workers through normal channels (and that they should be treated the same as other employees); and
- (c) provision should be made to deal with cases where unemployment of domestic workers arises as a result of the death of their employers.

1.3 In order to treat seasonal workers the same as other employees, the Bill seeks to delete the definition of “seasonal worker” and to delete other references to seasonal workers in the Act. In order to give effect to the Task Team’s recommendations in respect of domestic workers, it is proposed that sections 3, 12, 13 and 16 of the Act be suitably amended.

1.4 The Bill also seeks to amend the Act as follows:

1.4.1 Section 3(1)(b) of the Act has the unintended effect of excluding all full-time employees that receive remuneration under a learnership agreement from contributing to the Fund. However, the intention is that only learners who were not in the employment of the employer party to the learnership agreement in question when the agreement was concluded, and their employers, must be excluded from contributing to the Fund. An amendment to section 3 of the Act in order to give effect to the above intention is therefore proposed.

1.4.2 An amendment to section 3(1)(c) of the Act is proposed in order to make it clear that the intention of the paragraph in question is to exclude all employees of the State who are employed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), from the application of the Act.

1.4.3 In terms of the Act a contributor is not entitled to benefits for any period that the contributor was in receipt of a monthly pension from the State. The Bill seeks to amend section 3 of the Act in order to ensure that the Act does not apply to State pensioners.

1.4.4 In terms of section 11 of the Act the Commissioner must file a business plan, which was drafted by the Minister, with National Treasury. It is proposed in the Bill that the Commissioner, with the assistance of the actuary appointed in terms of section 9(1) of the Act and the Unemployment Insurance Board (“the Board”), should prepare the business plan and that the Director-General should file the business plan, as approved by the Minister, with National Treasury.

1.4.5 The Bill also seeks to amend sections 21, 24 and 27 of the Act in so far as they relate to the payment of illness, maternity and adoption benefits. The result of the proposed amendments would be that these benefits would then be based on a top-up rule, the limit being that the benefit from the Fund and the salary a contributor receives should not exceed 100 per cent of the contributor’s salary.

1.4.6 The Bill at present provides that a person who is entitled to benefits under the Act may appeal to the appeals committee of the Board if that person is aggrieved by a decision of the Unemployment Insurance Commissioner or a claims officer and to the Commission for Conciliation, Mediation and Arbitration if he or she is dissatisfied with a decision of the appeals committee. In order to ensure efficiency in processing appeals it is suggested that appeals should be decentralised to provinces. The Bill seeks to provide for the establishment of regional appeals committees which will handle appeals against decisions of the Unemployment Insurance Commissioner or claims officers. It is also proposed in the Bill that the appeals committee of the Board become the National Appeals Committee and that it handles appeals against decisions of any regional appeals committee.

2. NEDLAC PROCESS

The Bill was submitted to and approved by Nedlac on 30 June 2003. A negotiation committee comprising representatives from Business, Government and Labour was established to consider the Bill. The Community Constituency indicated in writing on 2 July 2003 that it also endorsed the amendments as agreed to by Business, Government and Labour.

3. CONSULTATION

The Board and South African Revenue Service was consulted during the drafting of the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

The members of regional appeals committees will have to be remunerated for their services.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Labour are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.