

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
UNEMPLOYMENT INSURANCE
BILL**

[B 3—2001]

*(As agreed to by the Portfolio Committee on Labour
(National Assembly))*

[B 3A—2001]

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AMENDMENTS AGREED TO

UNEMPLOYMENT INSURANCE BILL
[B 3—2001]

CLAUSE 1

1. On page 5, after line 12, to insert the following definition:

“child” means a person as contemplated in section 30(2) who is under the age of 21 years and includes any person under the age of 25 who is a learner and who is wholly or mainly dependent on the deceased;
2. On page 5, from line 30, to omit the definition of “employee” and to substitute:

“employee” means any person who works for another person and who receives any remuneration or to whom any remuneration accrues, but excludes an independent contractor;
3. On page 5, in line 34, to omit “by section 5(2)(a)” and to substitute “in terms”.
4. On page 5, from line 36, to omit the definition of “employer” and to substitute:

“employer” means any person, including a person acting in a fiduciary capacity, who pays or is liable to pay to any person any amount by way of remuneration, and any person responsible for the payment of any amount by way of remuneration to any person under the provisions of any law or out of public funds, excluding any person who is not acting as a principal;
5. On page 6, from line 10, to omit the definition of “remuneration” and to substitute:

“remuneration” means any amount which is paid or is payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, fee, emolument or stipend in respect of services rendered;
6. On page 6, after line 21, to insert the following definition:

“seasonal worker” means any person who is employed by an employer for an aggregate period of at least three months over a 12 month period with the same employer and whose work is interrupted by reason of a seasonal variation in the availability of work;
7. On page 6, after line 22, to insert:

“Unemployment Insurance Contributions Act” means an Act passed by Parliament after this Act, providing for unemployment contributions;

CLAUSE 3

1. On page 6, in line 44, to omit paragraph (e).

2. On page 6, after line 44, to insert:
 - (2) Despite subsection (1), this Act will only apply to domestic and seasonal workers and their employers 12 months after this Act takes effect.
3. On page 6, from line 45, to omit subsection (2)(a) and to substitute:
 - (3) (a) The Minister must, as soon as possible after this Act takes effect, designate or appoint a body which must seek to investigate and make recommendations regarding the administration of this Act to domestic and seasonal workers.
4. On page 6, in line 48, to omit “18” and to substitute “12”.

CLAUSE 10

1. On page 8, in line 31, to omit “section” and to substitute “sections 16 and”.
2. On page 8, in line 31, after “1999),” to insert “in order to cover any deficit in the Fund”.

CLAUSE 13

1. On page 9, in line 35, to omit “dividing the monthly remuneration by 30,33” and to substitute:

multiplying the monthly remuneration by 12 and dividing it by 365
2. On page 9, in line 36, to omit “dividing the weekly remuneration by 7” and to substitute:

multiplying the weekly remuneration by 52 and dividing it by 365

CLAUSE 14

1. On page 10, in line 6, to omit “or disability grant”.
2. On page 10, from line 14, to omit paragraph (iv).

CLAUSE 15

1. On page 10, in line 29, to omit “application in terms of section 17” and to substitute “unemployment”.

CLAUSE 16

1. On page 10, from line 37, to omit paragraph (a) and to substitute:
 - (a) the reason for the unemployment is—
 - (i) the termination of the contributor’s contract of employment by the employer of that contributor or the ending of a fixed term contract,
 - (ii) the dismissal of the contributor, as defined by section 186 of the Labour Relations Act, 1995 (Act No. 66 of 1995), or
 - (iii) insolvency in terms of the provisions of the Insolvency Act, 1936 (Act No. 24 of 1936);

2. On page 11, in line 6, to omit ", dates and places" and to substitute "and dates".

CLAUSE 17

1. On page 11, in line 20, to omit "good" and to substitute "just".
2. On page 11, in line 27, to omit "weekly".
3. On page 11, in line 30, to omit "and where".

CLAUSE 18

1. On page 11, in line 41, to omit "claims officer" and to substitute "applicant at the time of application".
2. On page 11, in line 42, to omit ", without good reason, refuses to accept" and to substitute:

receives unemployment benefits and without just reason refuses to accept appropriate,

CLAUSE 19

1. On page 11, in line 49, to omit "employee" up to and including "illness" in line 50 and to substitute:

contributor ceases to work as a result of the illness

CLAUSE 20

1. On page 12, from line 10, to omit paragraph (a).
2. On page 12, in line 15, after "Chapter" to insert:
or adoption benefits in terms of Part E of this Chapter; or
3. On page 12, in line 16, to omit "good" and to substitute "just".

CLAUSE 21

1. On page 12, in line 22, to omit "in each week of" and to substitute "for".
2. On page 12, in line 23, to omit "weekly".
3. On page 12, in line 25, to omit "weekly".

CLAUSE 22

1. On page 12, in line 43, to omit "weekly".

CLAUSE 23

1. On page 12, in line 53, to omit "claims officer" and to substitute "applicant at the time of application".

CLAUSE 24

1. On page 13, in line 4, to omit “confinement” and to substitute “delivery and the period thereafter,”.
2. On page 13, in line 9, to omit “in each week of” and to substitute “for”.
3. On page 13, in line 10, to omit “weekly”.
4. On page 13, in line 12, to omit “weekly”.
5. On page 13, in line 14, to omit “in confinement” and to substitute “on maternity leave”.
6. On page 13, in line 17, to omit “once she has been confined” and to substitute “during the third trimester”.

CLAUSE 25

1. On page 13, in line 22, to omit “confinement” and to substitute “childbirth”.
2. On page 13, in line 27, to omit “confinement” and to substitute “childbirth”.
3. On page 13, in line 29, to omit “regarding the applicant’s period of confinement”.
4. On page 13, in line 34, to omit “weekly”.

CLAUSE 26

1. On page 13, in line 43, to omit “claims officer” and to substitute “applicant at the time of application”.

CLAUSE 27

1. On page 14, in line 5, to omit “maternity” and to substitute “adoption”.
2. On page 14, in line 6, to omit “in each week of” and to substitute “for”.
3. On page 14, in line 7, to omit “weekly”.
4. On page 14, in line 10, to omit “weekly”.

CLAUSE 28

1. On page 14, in line 26, to omit “weekly”.

CLAUSE 29

1. On page 14, in line 36, to omit “claims officer” and to substitute “applicant at the time of application”.

CLAUSE 30

1. On page 14 , in line 43, to omit “good” and to substitute “just”.

2. On page 14, in line 49, after “spouse” to insert “or life partner”.
3. On page 14, in line 50, after “spouse” to insert “or life partner”.
4. On page 14, in line 52, to omit “weekly”, wherever it occurs.
5. On page 14, from line 55, to omit subsection (4).

CLAUSE 31

1. On page 15, in line 14, to omit “weekly”.

CLAUSE 32

1. On page 15, in line 25, to omit “claims officer” and to substitute “applicant at the time of application”.

CLAUSE 35

1. On page 15, from line 43, to omit subsections (2) and (3) and to substitute:

(2) If the Commissioner determines that a person contemplated in subsection (1) has been paid benefits in error or in excess of the person’s entitlement, the Commissioner must, within eighteen months of the date of the determination, make a written demand for repayment from that person.

(3) A written demand contemplated in subsection (2) must include—

- (a) a statement of the amount paid in error;
- (b) an explanation as to why that person was ineligible to receive the funds; and
- (c) evidence that the person to whom the demand is addressed actually received the funds.

(4) The persons contemplated in subsection (1) must refund the amount within 90 days of the written demand.

CLAUSE 37

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

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 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 appeals committee may refer the matter for arbitration to the CCMA.

CLAUSE 48

1. On page 18, after line 5, to insert:
 - (iii) policies for minimising unemployment; and
 - (iv) the creation of schemes to alleviate the effects of unemployment;

CLAUSE 49

1. On page 18, in line 22, to omit “four” and to substitute “three”.
2. On page 18, in line 23, to omit “four” and to substitute “three”.
3. On page 18, in line 24, to omit “and” and to insert:
 - (c) three members must be nominated by NEDLAC to represent organisations of community and development interests; and
4. On page 18, in line 25, to omit “four” and to substitute “three”.
5. On page 18, in line 40, to omit “good” and to substitute “just”.

CLAUSE 50

1. On page 18, in line 50, after “Board” to insert “, which must include an appeals committee”.

CLAUSE 52

1. On page 19, in line 33, to omit “Department of Finance” and to substitute “National Treasury”.

CLAUSE 57

1. On page 20, after line 48, to add:
 - (3) (a) In order to determine the payment of benefits in terms of this Act, the Commissioner may access any information on a database of the State that contains information regarding social security.
 - (b) For purposes of paragraph (a) the Commissioner must co-operate with other State institutions to link their respective databases.

CLAUSE 68

1. On page 24, in line 27, after “section” to insert “, section 69”.

NEW CLAUSE

1. That the following be a new Clause:

Persons regarded as contributors for purposes of Act

69. (1) The Minister may, after receipt of an application in a prescribed form and with the concurrence of the Board, by notice in

the *Gazette*, declare that as from a date specified in the notice any specified class of persons, or any person employed in any specified business or section of a business or in any specified area, must be regarded as contributors for purposes of this Act.

(2) The procedure referred to in section 55(1) applies with the necessary changes to a notice issued under subsection (1).

SCHEDULE 2

Schedule rejected.

NEW SCHEDULE

1. That the following be a new Schedule:

SCHEDULE 2

MATHEMATICAL CALCULATION OF CONTRIBUTOR'S ENTITLEMENT

The benefit to which a contributor is entitled is calculated in one of two ways, depending on a contributor's income prior to becoming unemployed:

1. Contributors who earned **less** than a particular amount (known as the "benefit transition income level") are entitled to a percentage of their previous pay.
2. Contributors who earned **more** than the benefit transition income level are entitled to a flat benefit, equal to the entitlement of a contributor who was previously paid at the benefit transition income level.

The benefit transition income level

The 1953 International Labour Organisation Convention (Convention No. 102) stipulates that the wage of a skilled manual worker should determine the appropriate income level at which to set a ceiling for membership of a social insurance scheme. Over the years, South Africa's Unemployment Insurance scheme has roughly kept pace with this guideline. The benefit transition income level is therefore linked to this rate.

The current income ceiling is R8 099 per month. This will become the initial benefit transition income level for the purposes of this Act. However, in terms of section 12(3)(a), the Minister may change the benefit transition income level from time to time to reflect changing patterns of income.

Contributors who previously earned less than the benefit transition income level

For contributors who earned less than the benefit transition income level, entitlement to benefit is earnings-related. A contributor's entitlement is calculated according to the following formula:

$$\text{Benefit} = \text{Daily Income} * \text{IRR}$$

where IRR is the Income Replacement Rate corresponding to the contributor's daily income.

Daily Income

If a contributor was paid weekly, daily income is the weekly rate of pay divided by 7.

If a contributor was paid fortnightly, daily income is the fortnightly rate of pay divided by 14.

If a contributor was paid monthly, daily income is the monthly rate of pay multiplied by 12, then divided by 365.

Income Replacement Rate

The Income Replacement Rate (IRR) determines the percentage of a contributor's previous income to which the contributor is entitled in the form of benefits. The IRR is a variable, so it defines a sliding scale. A contributor who previously earned a low wage is entitled to receive benefits representing a larger proportion of her or his previous income than a contributor who previously earned a higher wage.

The IRR is at its maximum when income equals zero, and it reaches its minimum where income is equal to the benefit transition income level. The maximum IRR is fixed at 60%. The minimum IRR is currently set at 38%. However, the Minister may vary the minimum IRR in terms of section 12(3)(b).

Using current values, the IRR can be calculated according to the following formula:

$$\text{IRR} = 29.2 + (99779.68 / (3239.6 + Y_i))$$

where Y_i represents a contributor's **monthly** rate of income. (Consistency of units is essential. To calculate IRR from daily or weekly rates of pay, please refer to the more detailed explanation of the IRR formula in the technical note below.)

Contributors who previously earned more than the benefit transition income level

Contributors who earned more than the benefit transition income level are entitled to a flat benefit equal to the benefit transition income level multiplied by the minimum IRR.

At the current benefit transition income level of R8 099 per month, this works out to R101.18 per day:

$$\text{Daily income} = (8099 * 12) / 365 = 266.2685$$

$$\text{IRR} = 38\% \text{ or } 0.38$$

$$\text{Benefit} = 266.2685 * 0.38 = 101.18$$

Duration of benefits

In terms of section 13(3), a contributor is eligible to receive one day's benefit for every six completed days of employment, up to a maximum of 238 days (34 weeks). A contributor will therefore be eligible to claim benefits for the maximum duration after being continuously employed for four years. If a contributor has already drawn benefits (other than maternity benefits) in terms of this Act in the preceding four years, the number of days for which the contributor is eligible to claim benefits will be reduced accordingly.

To calculate the number of days of benefits to which a contributor is entitled:

1. Determine the total number of days that the contributor was employed (and contributing) in the four-year period immediately preceding the date of application for benefits.

2. Divide the total number of days by 6, disregarding any remainder or fractional portion of the result.
3. Subtract the number of days (if any) for which the contributor claimed benefits (other than maternity benefits) in terms of this Act during the preceding four years.

Amount of benefit payment

The benefit payment to which a contributor is entitled in any given period shall be the amount of the benefit entitlement multiplied by the number of days for which the contributor is eligible to receive benefits during the payment period.

Technical note on the Calculation of IRR

The sliding scale for the Income Replacement Rate (IRR) is represented by a portion of the curve (rectangular hyperbola) produced by a graph of the function $y = 1/x$, where the y axis represents the IRR and the x axis represents income. However, in order to associate this curve with values that are meaningful for this purpose, it is necessary to apply adjusting formulae.

Calculating the IRR associated with any given level of income below the benefit transition income level can be done in three steps:

1. The rate of income is transformed into a corresponding value on the x axis (x_i). The formula for this is:

$$Y_i = (x_i - x_1) Y_{LRR} / (x_2 - x_1) \quad (1)$$

where:

Y_i is the contributor's rate of income;

Y_{LRR} is the benefit transition income level; and

x_1 and x_2 are constants that determine the portion of the curve that is used to calculate IRR.

The current values of the parameters Y_{LRR} , x_1 and x_2 are:

$$Y_{LRR} = R8\ 099 \text{ per month}$$

$$x_1 = 2$$

$$x_2 = 7$$

Using these values, expression (1) can be simplified to:

$$x_i = 2 + (Y_i / 1619.8) \quad (1a)$$

where Y_i is expressed as a monthly rate of income. [It is important to ensure that both the contributor's rate of income (Y_i) and the benefit transition income level (Y_{LRR}) are expressed in the same units—monthly, weekly, or daily.]

2. The y values corresponding to the x values are calculated using the general formula:

$$y = 1 / x \quad (2)$$

thus:

$$y_1 = 1 / x_1$$

$$y_2 = 1 / x_2$$

$$y_i = 1 / x_i$$

3. The y_i value is then converted to the corresponding IRR. The formula for this is:

$$IRR = LRR + (y_i - y_2) (URR - LRR) / (y_1 - y_2) \quad (3)$$

where:

IRR is the income replacement rate;

LRR is the lower (minimum) income replacement rate; and

URR is the upper (maximum) income replacement rate.

The current values of the parameters LRR, URR, y_1 and y_2 are:

$$\text{LRR} = 38\%$$

$$\text{URR} = 60\%$$

$$y_1 = 1/2$$

$$y_2 = 1/7$$

Using these values, expression (3) can be simplified to:

$$\text{IRR} = 61.6y_i + 29.2 \quad (3a)$$

SCHEDULE 3

1. On page 28, in line 11, to omit “R93 288” and to substitute “R97 188”.

2. On page 28, from line 13, to omit Table One and to substitute:

Tables to illustrate benefits at various earnings levels

Based on a transition income of R97 188 per annum

The various amounts on these tables

are calculated in terms of the

equation in Schedule 2

IRR = Income replacement rate

Approximate benefits payable on monthly basis

Income	IRR = UI benefit	
150.00	58.64	87.96
300.00	57.39	172.17
500.00	55.88	279.41
700.00	54.53	381.69
1 000.00	52.74	527.35
1 500.00	50.25	753.79
2 000.00	48.24	964.87
3 000.00	45.19	1 355.74
3 075.57	45.00	1 384.01
4 000.00	42.98	1 719.30
5 000.00	41.31	2 065.49
6 000.00	40.00	2 399.95
7 410.00	38.57	2 857.99
8 099.00	38.00	3 077.62
10 000.00	30.78	3 077.62

Approximate benefits payable on weekly basis

Income	IRR = UI benefit	
34.62	58.64	20.30
69.23	57.39	39.73
115.38	55.88	64.48
161.54	54.53	88.08
230.77	52.74	121.70
346.15	50.25	173.95
461.54	48.24	222.66
692.31	45.19	312.86
709.75	45.00	319.39
923.08	42.98	396.76
1 153.85	41.31	476.65
1 384.62	40.00	553.83
1 710.00	38.57	659.54
1 869.00	38.00	710.22
2 307.69	30.78	710.22

Approximate benefits payable on daily basis

Income	IRR = UI benefit	
4.93	58.64	2.89
9.86	57.39	5.66
16.44	55.88	9.19
23.01	54.53	12.55
32.88	52.74	17.34
49.32	50.25	24.78
65.75	48.24	31.72
98.63	45.19	44.57
101.11	45.00	45.50
131.51	42.98	56.52
164.38	41.31	67.91
197.26	40.00	78.90
243.62	38.57	93.96
266.27	38.00	101.18
328.77	30.78	101.18

The UI benefits payable in the tables will be paid for the duration of benefit days that have been accrued by a contributor.