

REPUBLIC OF SOUTH AFRICA

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# UNEMPLOYMENT INSURANCE BILL

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*(As amended by the Portfolio Committee on Labour (National Assembly))  
(The English text is the official text of the Bill)*

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(MINISTER OF LABOUR)

[B 3B—2001]

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# BILL

To establish the Unemployment Insurance Fund; to provide for the payment from the Fund of unemployment benefits to certain employees, and for the payment of illness, maternity, adoption and dependant's benefits related to the unemployment of such employees; to provide for the establishment of the Unemployment Insurance Board, the functions of the Board and the designation of the Unemployment Insurance Commissioner; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1

## INTRODUCTORY PROVISIONS

## Definitions

1. (1) In this Act unless the context indicates otherwise—
- “actuary” means a person appointed in terms of section 9(1); 5
- “agent” means any person appointed under section 58(9);
- “benefits” means benefits contemplated in section 12;
- “Board” means the Unemployment Insurance Board established in terms of section 47;
- “CCMA” means the Commission for Conciliation, Mediation and Arbitration established by section 112 of the Labour Relations Act, 1995 (Act No. 66 of 1995); 10
- “claims officer” means any claims officer appointed in terms of section 46;
- “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; 15
- “Commissioner” means the Unemployment Insurance Commissioner designated as such under section 43;
- “contribution” means the amount payable by the employer or a contributor in terms of the Unemployment Insurance Contributions Act;
- “contributor” means a natural person— 20
- (a) who is or was employed;
- (b) to whom this Act, in terms of section 3, applies; and
- (c) who can satisfy the Commissioner that he or she has made contributions for purposes of this Act;
- “Director-General” means the Director-General of the Department of Labour and any officer in the Department of Labour to whom the Director-General has delegated any function in terms of section 58(3); 25
- “domestic worker” means an employee who performs domestic work in the home of his or her employer, and includes a—
- (a) gardener; 30
- (b) person employed by a household as a driver of a motor vehicle; and
- (c) person who takes care of any person in that home, but does not include a farm worker.
- “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; 35
- “employee’s contribution” means the amount prescribed in terms of the Unemployment Insurance Contributions Act;
- “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; 40
- “employment office” means any office of the Department of Labour or any agency designated for this purpose by the Director-General in terms of section 58(9); 45
- “financial year” means the period between the first day of April in any year and the thirty-first day of March in the next year, both dates included;
- “Fund” means the Unemployment Insurance Fund established by section 4;
- “labour inspector” means—
- (a) an inspector appointed under section 63 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); or 50
- (b) any person designated by the Minister under that section to perform any function of a labour inspector;
- “Minister” means the Minister of Labour;
- “month” means the period extending from a day in one month to a day preceding the day corresponding numerically to that day in the following month, both days included<sup>1</sup>; 55

1. For example 10 March to 9 April.

- “NEDLAC” means the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);
- “officer” means an officer as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 5
- “prescribed” means prescribed by regulation;
- “public service” means the public service as contemplated in section 197 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- “regulation” means a regulation made under this Act;
- “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; 10
- “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; 15
- “this Act” includes any regulation made in terms of this Act;
- “Unemployment Insurance Contributions Act” means an Act passed by Parliament after this Act, providing for unemployment contributions;
- “week” means any period of seven consecutive days. 20

### **Purpose of this Act**

2. The purpose of this Act is to establish an unemployment insurance fund to which employers and employees contribute and from which employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits and in so doing to alleviate the harmful economic and social effects of unemployment. 25

### **Application of this Act**

3. (1) This Act applies to all employers and employees, other than—
- (a) employees employed for less than 24 hours a month with a particular employer, and their employers;
  - (b) employees who receive remuneration under a learnership agreement registered in terms of the Skills Development Act, 1998 (Act No. 97 of 1998), and their employers; 30
  - (c) employers and employees in the national and provincial spheres of government;
  - (d) persons who enter the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within the Republic if upon the termination thereof the employer is required by law or by the contract of service, apprenticeship or learnership, as the case may be, or by any other agreement or undertaking, to repatriate that person, or that person is so required to leave the Republic, and their employers. 35
- (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) (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. 45
- (b) The investigation must be concluded within 12 months from the date that this section takes effect.
  - (c) The Minister must consult the Board on the outcome of the investigation.

## **CHAPTER 2**

### **UNEMPLOYMENT INSURANCE FUND 50**

#### **Establishment of Unemployment Insurance Fund**

4. (1) The Unemployment Insurance Fund is hereby established.
- (2) The Fund consists of—

- (a) the contributions made by employers and employees and collected by the Commissioner of the South African Revenue Service in terms of the Unemployment Insurance Contributions Act;
- (b) the contributions made by employers and employees and collected by the Commissioner in terms of the Unemployment Insurance Contributions Act; 5
- (c) money appropriated by Parliament;
- (d) any penalties and fines imposed in terms of this Act other than by a court of law;
- (e) any interest or return on investment made by the Fund;
- (f) any money paid erroneously to the Fund which, in the opinion of the Director-General, cannot be refunded; 10
- (g) any bequest or donation received by the Fund;
- (h) any movable or immovable property purchased or otherwise acquired by the Fund; and
- (i) any other money to which the Fund may become entitled. 15

### **Application of Fund**

5. The Fund must be used for the—

- (a) payment of benefits in terms of this Act;
- (b) reimbursement of excess contributions to employers;
- (c) payment of— 20
  - (i) remuneration and allowances to members of the Unemployment Insurance Board and its committees; and
  - (ii) any other expenditure reasonably incurred and relating to the application of this Act.

### **Raising of funds, loans and obtaining bank overdraft facilities 25**

6. The raising of funds by way of loans and bank overdraft facilities in respect of the Fund must be done in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

### **Investment of money of Fund**

7. (1) The money of the Fund other than money required to meet the current expenditure of the Fund may be deposited on behalf of the Fund by the Director-General with the Public Investment Commissioners to be invested in terms of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984).

(2) Any profit on investments accrues to the Fund and any loss must be borne by the Fund. 35

### **Donations and bequests to Fund**

8. (1) Any person, body, corporation, organisation or financial or other institution may make a donation or bequest to the Fund.

(2) The Director-General may accept donations or bequests for and on behalf of the Fund. 40

### **Appointment of and annual review by actuary**

9. (1) The Director-General must appoint an actuary who is a member of the Actuarial Society of South Africa or who is supervised by a member of that Society to perform the functions assigned to the actuary in this Act.

(2) Within two months after the end of each financial year, the actuary must review the financial soundness of the Fund for that financial year, and provide an actuarial valuation report to the Director-General. 45

(3) The actuarial valuation report must contain—

- (a) a statement—
  - (i) reflecting the actuarial value of the assets and liabilities of the Fund; 50
  - (ii) on the financial soundness of the Fund; and

- (iii) on whether or not there was a surplus or deficit in the Fund in the financial year in question;
- (b) an indication of—
  - (i) the basis and method used to value the assets and liabilities of the Fund;
  - (ii) any changes to the basis and method used to value the Fund as compared with the actuarial valuation report of the previous year; and
  - (iii) any special consideration or restriction that the Director-General brought to the attention of or made applicable to the actuary in performing the functions in terms of this section;
- (c) an explanatory note on any matter relevant to obtaining a true and meaningful statement of the financial position of the Fund;
- (d) recommendations for the maintenance or improvement of the financial soundness of the Fund.

### **Surplus and deficit in Fund**

- 10.** (1) Subject to subsection (2), the Director-General must report and make recommendations to the Minister if the difference between income and expenditure of the Fund is—
- (a) greater than is required to meet payments for benefits; or
  - (b) insufficient or not increasing at a sufficient rate to meet payments for benefits that may reasonably be anticipated.
- (2) The Director-General may only submit the report contemplated in subsection (1) after having consulted with the Board and the actuary on the contents of the report.
- (3) In respect of a report contemplated in subsection (1)(a), the Minister, after consultation with the Board, may utilise the surplus to give effect to the purposes of this Act, including—
- (a) improving the administrative efficiency and capacity of the Board and Fund; and
  - (b) establishing a reserve fund.
- (4) In respect of a report contemplated in subsection (1)(b), the Minister may request the Minister of Finance to adjust the national budget in the manner contemplated in sections 16 and 30 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), in order to cover any deficit in the Fund.

### **Accounting, auditing and financial reporting**

- 11.** (1) Despite section 49(2) to (5) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Director-General is the accounting authority for the Fund.
- (2) (a) At the beginning of each financial year, the Commissioner must file a business plan with the National Treasury.
- (b) The Minister must compile the business plan with the concurrence of the Director-General and the Commissioner, and they are to be assisted by the actuary and the Board.
- (3) In addition to the matters which must be included in the annual report and financial statements referred to in section 55 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the annual report must set out and contain a statement showing—
- (a) the total number of persons who received benefits in terms of this Act;
  - (b) the total number of employers who paid contributions in terms of the Unemployment Insurance Contributions Act;
  - (c) the total number of contributors who paid contributions in terms of the Unemployment Insurance Contributions Act;
  - (d) the total number of persons deemed to be contributors under section 45;
  - (e) the total monetary value of benefits provided in respect of each category of benefit;
  - (f) a statement setting out the loans, overdrafts, advances and financial commitments of the Fund;
  - (g) the particulars of all donations and bequests received by the Fund;
  - (h) the actuarial valuation report contemplated in section 9;
  - (i) particulars of the use of all immovable and movable property acquired by the Fund for purposes contemplated in section 58(6) and (7);
  - (j) any amount written off in terms of section 58(8); and
  - (k) any other matter determined by the Minister.

## CHAPTER 3

### CLAIMING BENEFITS

#### *Part A: Right to benefits*

#### **Right to benefits**

- 12.** (1) Subject to the provisions of this Act, a contributor or a dependant, as the case may be, is entitled to the following benefits: 5
- (a) Unemployment benefits contemplated in Part B of this Chapter;
  - (b) illness benefits contemplated in Part C of this Chapter;
  - (c) maternity benefits contemplated in Part D of this Chapter;
  - (d) adoption benefits contemplated in Part E of this Chapter; and 10
  - (e) dependant's benefits contemplated in Part F of this Chapter.
- (2) An example of the scale of benefits to which a contributor is entitled is contained in Schedule 3, as calculated from Schedule 2.
- (3) (a) The Minister may, with the concurrence of the Minister of Finance, by notice in the *Gazette* and subject to subsection (4), amend the scale of benefits contained in Schedule 3 in accordance with a maximum monthly rate of remuneration of a skilled manual labourer as determined by the Social Security (Minimum Standards) Convention, 1953 (Convention No. 102), of the International Labour Organisation. 15
- (b) The scale of benefits contemplated in paragraph (a) may vary between a maximum rate of 60% of remuneration for lower income contributors and a lower rate of remuneration for higher income contributors as will be determined by thresholds as set out in Schedule 3. 20
- (4) When acting in accordance with subsection (3), the Minister must—
- (a) consult with the Board and must have regard to budgeted— 25
    - (i) contribution and investment income from the Fund;
    - (ii) payment of benefits;
    - (iii) provision to meet expenses related to administering this Act; and
    - (iv) provision for contingency reserves; and
  - (b) comply with the procedure set out in section 55, with the changes required by the context. 30

#### **Calculation of benefits**

- 13.** (1) Subject to subsection (2), for purposes of calculating the benefits payable to a contributor, the daily rate of remuneration of a contributor, subject to the prescribed maximum, must be determined—
- (a) if paid monthly, by multiplying the monthly remuneration by 12 and dividing it by 365; 35
  - (b) if paid weekly, by multiplying the weekly remuneration by 52 and dividing it by 365.
- (2) If the contributor's remuneration fluctuates significantly from period to period, the calculation must be based on the average remuneration of that contributor over the previous six months. 40
- (3) Subject to subsection (5), a contributor's entitlement to benefits in terms of this Chapter accrues at a rate of one day's benefit for every completed six days of employment as a contributor subject to a maximum accrual of 238 days benefit in the four year period immediately preceding the date of application for benefits in terms of this Chapter, less any days of benefit received by the contributor during this period. 45
- (4) For purposes of determining completed days of employment as contemplated in subsection (3), the period includes—
- (a) the day that a contributor commenced employment and runs up to and including the day on which employment was terminated; and 50
  - (b) any period in respect of which—
    - (i) an employee was paid remuneration in lieu of notice;
    - (ii) a merchant seaman received remuneration in terms of section 140 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951).

(5) The days of benefits that a contributor is entitled to in terms of subsection (3) may not be reduced by the payment of maternity benefits in terms of Part D of this Chapter.<sup>2</sup>

#### **Contributor not entitled to benefits under certain circumstances**

- 14.** A contributor is not entitled to benefits for any period that the contributor—
- (a) was in receipt of— 5
    - (i) a monthly pension from the State;
    - (ii) any benefit from the Compensation Fund established under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), as a result of an occupational injury or disease, which injury or disease caused the total or temporary unemployment of that contributor; 10
    - (iii) benefits from any unemployment fund or scheme established by a council under section 28(g) or 43(1)(c) of the Labour Relations Act, 1995 (Act No. 66 of 1995);
  - (b) fails to comply with any provision of this Act or any other law relating to unemployment; or 15
  - (c) is suspended from receiving benefits in terms of section 36(1).

#### ***Part B: Unemployment benefits***

#### **Calculation of period of unemployment under this Part**

- 15.** (1) For purposes of this Part, any period of unemployment must be calculated from the date of unemployment. 20
- (2) The date contemplated in subsection (1) may be moved to a date prior to the application if the claims officer is satisfied that any delay in making the application was caused by circumstances beyond the control of the contributor.

#### **Right to unemployment benefits**

- 16.** (1) Subject to section 14, an unemployed contributor is entitled to unemployment benefits contemplated in this Part for any period of unemployment lasting more than 14 days, if— 25
- (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, 30
    - (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);
  - (b) application is made in accordance with the prescribed requirements and the provisions of this Part; 35
  - (c) the contributor is registered as a work-seeker with a labour centre established under the Skills Development Act, 1998 (Act No. 97 of 1998); and
  - (d) subject to subsection (3), the contributor is capable of and available for work.
- (2) An unemployed contributor is not entitled to the benefits referred to in subsection (1) if— 40
- (a) the contributor fails to report at the times and dates stipulated by the claims officer in terms of section 17(4)(d); or

2. Method of calculating days of benefits that a contributor is entitled to:

- Step 1 - Determine total number of days that an employee was employed as a contributor in the four-year period immediately preceding the date of application for benefits in terms of this Chapter.
- Step 2 - Divide total number of days by 52 multiplied by seven and disregard any fraction of the resultant figure.
- Step 3 - Subtract from this amount any days benefits (excluding maternity benefits) received in the four-year period immediately preceding the date of application for benefits in terms of this Chapter.
- Step 4 - The resultant figure determines the days of benefits that a contributor is entitled to.

(b) the contributor refuses without just reason to undergo training and vocational counselling for employment under any scheme approved by the Director-General in terms of this Act or any other law.

(3) Despite subsection (1)(d) and subject to section 20(1)(a), a contributor who becomes ill while in receipt of unemployment benefits, remains entitled to unemployment benefits if the claims officer is satisfied that the illness is not likely to prejudice the contributor's chance of securing employment. 5

### **Application for unemployment benefits**

**17.** (1) Application for unemployment benefits must be made in the prescribed form at an employment office. 10

(2) The application must be made within six months of the termination of the contract of employment, but the Commissioner may accept an application made after the six-month time limit has expired on just cause shown.

(3) The claims officer must investigate the application and, if necessary, request further information regarding the applicant's continued unemployment. 15

(4) If the application complies with the provisions of this Chapter, the claims officer must—

(a) approve the application;

(b) determine—

(i) the amount of benefits for purposes of section 13(3); 20

(ii) the benefits the applicant is entitled to in terms of section 13(4);

(c) authorise the payment of the benefits; and

(d) stipulate when the applicant must report to the employment office for purposes of confirming that the contributor—

(i) has been unemployed for the period in respect of which the unemployment benefit has been claimed; and 25

(ii) is capable of and available for work.

(5) If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing that the application is defective and of the reasons why it is defective. 30

### **Payment of unemployment benefits**

**18.** (1) The Director-General must pay the unemployment benefits to the contributor at the employment office at which the application was made or any other employment office determined by the applicant at the time of application.

(2) If the contributor receives unemployment benefits and without just reason refuses to accept appropriate, available work, or to undergo appropriate training or vocational counselling, the claims officer may impose a penalty of up to a maximum of thirteen weeks during which no benefits may be paid to the contributor. 35

### ***Part C: Illness benefits***

#### **Determination of period of illness under this Part** 40

**19.** (1) For purposes of this Part, the period of illness must be determined from the date the contributor ceases to work as a result of the illness.

(2) Subsection (1) applies with the necessary changes in respect of the determination of the periods of maternity and adoption benefits contemplated in sections 24(2) and 27(3), respectively. 45

#### **Right to illness benefits**

**20.** (1) Subject to section 14, a contributor is entitled to the illness benefits contemplated in this Part for any period of illness if—

(a) the contributor is unable to perform work on account of illness;

(b) the contributor fulfils any prescribed requirements in respect of any specified illness; and 50

(c) application is made for illness benefits in accordance with the prescribed requirements and the provisions of this Part.

- (2) A contributor is not entitled to illness benefits—
- (a) if the period of illness is less than 14 days; and
  - (b) for any period during which the contributor—
    - (i) is entitled to unemployment benefits in terms of Part B of this Chapter or adoption benefits in terms of Part E of this Chapter; or 5
    - (ii) without just reason, refuses or fails to undergo medical treatment or to carry out the instructions of a medical practitioner, chiropractor or homeopath.

### Calculation of illness benefits

**21.** (1) Subject to subsection (2), the contributor must be paid the difference between 10 any sick leave paid to that contributor in terms of any other law, collective agreement or contract of employment for the period contemplated in section 19, and the maximum benefit payable in terms of section 12(2).

(2) When taking into account any sick leave paid to the contributor in terms of any other law, or any collective agreement or contract of employment, the illness benefit 15 may not be more than the remuneration the contributor would have received if the contributor had not been ill.

### Application for illness benefits

**22.** (1) (a) Application for illness benefits must be made personally in the prescribed form at an employment office. 20

(b) If the contributor cannot lodge the application personally, the claims officer may authorise any other person to lodge the application on behalf of the applicant.

(2) The application for illness benefits must be made within six months of the commencement of the period of illness, but the Commissioner may accept an application made after the six-month time limit has expired on good cause shown. 25

(3) The claims officer must investigate the application and, if necessary, request any further information regarding the period that the applicant was not working or received reduced remuneration as a result of the illness.

(4) If the application complies with the provisions of this Chapter, the claims officer must— 30

(a) approve the application;

(b) determine—

(i) the amount of benefits for purposes of section 13(3);

(ii) the benefits the applicant is entitled to in terms of section 13(4);

(c) authorise the payment of the benefits; and 35

(d) stipulate how the benefits are to be paid.

(5) If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing that the application is defective and of the reasons why it is defective.

### Payment of illness benefits 40

**23.** The Director-General must pay the illness benefits—

(a) at the employment office at which the application was made or any other employment office determined by the applicant at the time of application; and

(b) to the contributor or any other person authorised by the contributor who is accepted by the claims officer to be so authorised. 45

## *Part D: Maternity benefits*

### Right to maternity benefits

**24.** (1) Subject to section 14, a contributor who is pregnant is entitled to the maternity benefits contemplated in this Part for any period of pregnancy or delivery and the period thereafter, if application is made in accordance with prescribed requirements and the 50 provisions of this Part.

(2) Subject to subsection (3), the contributor must be paid the difference between any maternity benefit paid to that contributor in terms of any other law or any collective agreement or contract of employment for the period contemplated in section 19(2), and the maximum benefit payable in terms of section 12(2).

(3) When taking into account any maternity leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the maternity benefit may not be more than the remuneration the contributor would have received if the contributor had not been on maternity leave. 5

(4) For purposes of this section the maximum period of maternity leave is 17,32 weeks. 10

(5) A contributor who has a miscarriage during the third trimester or bears a still-born child is entitled to a maximum maternity benefit of six weeks after the miscarriage or stillbirth.

### **Application for maternity benefits**

**25.** (1) An application for maternity benefits must be made in the prescribed form at an employment office at least eight weeks before childbirth. 15

(2) The Commissioner may on good cause shown—

(a) accept an application after the period of eight weeks referred to in subsection (1);

(b) extend the period of submission of the application up to a period of six months after the date of childbirth. 20

(3) The claims officer must investigate the application and, if necessary, request further information.

(4) If the application complies with the provisions of this Chapter, the claims officer must— 25

(a) approve the application;

(b) determine—

(i) the amount of the benefits for purposes of section 13(3);

(ii) the benefits the applicant is entitled to in terms of section 13(4); and

(c) stipulate how the benefits are to be paid. 30

(5) If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing that the application is defective and of the reasons why it is defective.

### **Payment of maternity benefits**

**26.** The Director-General must pay the maternity benefits to the contributor at the employment office at which the application was made or any other employment office determined by the applicant at the time of application. 35

## ***Part E: Adoption benefits***

### **Right to adoption benefits**

**27.** (1) Subject to section 14, only one contributor of the adopting parties is entitled to the adoption benefits contemplated in this Part in respect of each adopted child and only if— 40

(a) the child has been adopted in terms of the Child Care Act, 1983 (Act No. 74 of 1983);

(b) the period that the contributor was not working was spent caring for the child; 45

(c) the adopted child is below the age of two; and

(d) the application is made in accordance with the prescribed requirements and the provisions of this Part.

(2) The entitlement contemplated in subsection (1) commences on the date that a competent court grants an order for adoption in terms of the Child Care Act, 1983 (Act No. 74 of 1983). 50

(3) Subject to subsection (4), the contributor must be paid the difference, if any, between any adoption benefit paid to that contributor in terms of any other law or any collective agreement or contract of employment for the period contemplated in section 19(2) and the maximum benefit payable in terms of section 12(2). 55

(4) When taking into account any leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the benefit may not be more than the remuneration the employer would have paid the contributor if the contributor had been at work.

#### **Application for adoption benefits** 5

**28.** (1) An application for adoption benefits must be made in the prescribed form at an employment office.

(2) The application must be made within six months after the date of the order for adoption, but the Commissioner may accept an application after the six-month period on good cause shown. 10

(3) The claims officer must investigate the application and, if necessary, request further information regarding the period the applicant was not working in order to care for the adopted child.

(4) If the application complies with the provisions of this Chapter, the claims officer must— 15

(a) approve the application;

(b) determine—

(i) the amount of the benefits for purposes of section 13(3);

(ii) the benefits the applicant is entitled to in terms of section 13(4);

(c) authorise the payment of the benefits; and 20

(d) stipulate how the benefits are to be paid.

(5) If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing that the application is defective and of the reasons why it is defective.

#### **Payment of adoption benefits** 25

**29.** The Director-General must pay the adoption benefits to the contributor at the employment office at which the application was made or any other employment office determined by the applicant at the time of application.

### *Part F: Dependant's benefits*

#### **Right to dependant's benefits** 30

**30.** (1) The surviving spouse or a life partner of a deceased contributor is entitled to the dependant's benefits contemplated in this Part, if application is made—

(a) in accordance with prescribed requirements and the provisions of this Part; and

(b) within six months of the death of the contributor except that, on just cause shown, the Commissioner may accept an application after the six-month period. 35

(2) Any dependent child of a deceased contributor is entitled to the dependant's benefits contemplated in this Part if application is made in accordance with the provisions of this Part and— 40

(a) there is no surviving spouse or life partner; or

(b) the surviving spouse or life partner has not made application for the benefits within six months of the contributor's death.

(3) The benefit payable to the dependant is the unemployment benefit referred to in Part B of this Chapter that would have been payable to the deceased contributor if the contributor had been alive. 45

#### **Application for dependant's benefits**

**31.** (1) An application for dependant's benefits must be made in the prescribed form at an employment office.

(2) The application must be made within the period referred to in section 30(1)(b) or within 14 days after the period referred to in section 30(2)(b), as the case may be. 50

(3) The claims officer must investigate the application and, if necessary, request further information relevant to processing the application.

(4) If the application complies with the provisions of this Chapter, the claims officer must— 55

- (a) approve the application;
- (b) determine—
  - (i) the amount of the benefits for purposes of section 13(3);
  - (ii) the benefits the applicant is entitled to in terms of section 13(4); and
  - (iii) to whom it must be paid;
- (c) authorise the payment of the benefits; and
- (d) stipulate how the benefits are to be paid.

(5) If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing that the application is defective and of the reasons why it is defective.

### **Payment of dependant's benefits**

32. The Director-General must pay the dependant's benefits to the dependant at the employment office at which the application was made or any other employment office determined by the applicant at the time of application.

### ***Part G: General provisions relating to claiming benefits***

#### **Benefits not to be assigned, attached or set off**

33. (1) Benefits may not be—
- (a) assigned;
  - (b) attached by the order of any court, except by any court order relating to maintenance of the dependants, including a former spouse, of that contributor; or
  - (c) set off against any debt;
- (2) For purposes of subsection (1), "debt" does not include a debt arising from benefits paid in error under the provisions of this Act.

#### **Benefits not subject to taxation**

34. Benefits payable to contributors and dependants in terms of this Act are not subject to taxation in terms of the Income Tax Act, 1962 (Act No. 58 of 1962).

#### **Recovery of benefits paid in error**

35. (1) Contributors or dependants who have been paid benefits that they are not entitled to in terms of this Act or paid benefits in excess of their entitlement must repay such benefits to the Fund.
- (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.

#### **Suspension of contributor's right to benefits**

36. (1) After giving a contributor or a dependant an opportunity to make written representations, the Commissioner may, on written notice with reasons provided, suspend a contributor or dependant for a period of up to five years from receiving benefits in terms of this Act if the contributor or dependant—
- (a) made a false statement in an application for benefits;
  - (b) submitted a fraudulent application for benefits;
  - (c) failed to inform a claims officer of the resumption of work during the period in respect of which benefits were being paid; or
  - (d) failed to comply with a written demand issued in terms of section 35(2).

- (2) The period of suspension may be imposed irrespective of whether or not actual payment was made to the contributor or dependant.
- (3) The decision to suspend a contributor from receiving payments does not—
- (a) absolve an employer from that employer's duty to contribute to the Fund; or
  - (b) limit an employer's right to be reimbursed for any contribution paid on behalf of the suspended contributor. 5

#### **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 10
  - (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.

### **CHAPTER 4**

#### **ENFORCEMENT 15**

#### **Securing undertakings**

- 38.** (1) A labour inspector who has reasonable grounds to believe that an employer has not complied with any provision of this Act or has committed an offence in terms of this Act, must endeavour to secure a written undertaking by the employer to comply with the relevant provision. 20
- (2) In endeavouring to secure the undertaking, the labour inspector—
- (a) may seek to obtain an agreement from the employer as to any step that the employer must take in terms of this Act;
  - (b) may seek to obtain an agreement from the employer as to any amount owed to the Fund in terms of the Unemployment Insurance Contributions Act; and 25
  - (c) must provide a receipt for any payment received.

#### **Compliance order**

- 39.** (1) A labour inspector may issue a compliance order if the labour inspector has reasonable grounds to believe that an employer has not complied with—
- (a) an undertaking obtained in terms of section 38; 30
  - (b) an order given in terms of subsection (2); or
  - (c) any provision of this Act.
- (2) A compliance order must set out—
- (a) the name of the employer, and the location of every workplace to which the compliance order applies; 35
  - (b) any provision of this Act that the employer has not complied with and details of the conduct constituting non-compliance;
  - (c) any amount that the employer is required to pay to the Fund in terms of the Unemployment Insurance Contributions Act;
  - (d) any written undertaking by the employer in terms of section 38 and any failure by the employer to comply with a written undertaking; 40
  - (e) any steps that the employer is required to take including, if necessary, the cessation of the contravention in question and the period within which those steps must be taken; and
  - (f) the maximum fine that may be imposed upon the employer for a failure to comply with a provision of this Act. 45
- (3) A labour inspector must deliver a copy of the compliance order to the employer.
- (4) An employer must comply with the compliance order within the period stated in the order unless the employer objects in terms of section 40.

**Objections to compliance order**

40. An employer may object to a compliance order by referring the dispute for resolution to the Director-General in the prescribed manner.

**Compliance order may be made an order of Labour Court**

41. The Director-General may apply to the Labour Court for a compliance order to be made an order of the Labour Court if the employer has not complied with the order. 5

**Duty of employer**

42. An employer must ensure that every statement or other information which must be kept and submitted in terms of this Act is correct.

**CHAPTER 5 10****COMMISSIONER AND CLAIMS OFFICERS****Designation of Unemployment Insurance Commissioner**

43. The Minister must designate an employee of the Department of Labour as the Unemployment Insurance Commissioner.

**Report of Commissioner, and delegation and assignment of powers and duties 15**

44. (1) The Commissioner must furnish the Director-General with a report on the activities of the Fund during the preceding financial year within six months of the end of each financial year or as soon as it is practical thereafter.

(2) The Commissioner may not delegate any power or assign any duty conferred or imposed on the Commissioner in terms of this Act, unless the Director-General consents to the delegation or assignment. 20

(3) Any power exercised or duty performed by or under a delegation or in terms of an assignment contemplated in subsection (1) must be regarded as having been exercised or performed by the Commissioner.

(4) A delegation or assignment in terms of this section does not limit the Commissioner's authority to exercise or perform the delegated power or assigned duty. 25

**Commissioner may deem person to be contributor**

45. The Commissioner may deem a person to be a contributor for purposes of this Act if it appears that the person should have received benefits in terms of this Act but, because of circumstances beyond the control of that person, is not entitled to benefits. 30

**Appointment of claims officers**

46. Subject to the laws governing the Public Service, the Director-General must appoint claims officers to assist the Commissioner to process applications of claims made in terms of this Act.

**CHAPTER 6 35****UNEMPLOYMENT INSURANCE BOARD****Establishment of Unemployment Insurance Board**

47. The Minister must establish the Unemployment Insurance Board.

**Powers and duties of Unemployment Insurance Board**

48. (1) The Board must— 40  
 (a) advise the Minister on—  
 (i) unemployment insurance policy; and

- (ii) policies arising out of the application of this Act;
- (iii) policies for minimising unemployment; and
- (iv) the creation of schemes to alleviate the effects of unemployment;
- (b) make recommendations to the Minister on changes to legislation in so far as it impacts on policy on unemployment or policy on unemployment insurance; 5  
and
- (c) perform any other function which may be requested by the Minister for purposes of giving effect to this Act.
- (2) The powers and duties of the Board must be exercised and performed subject to— 10
  - (a) the provisions of this Act and its constitution contemplated in section 50;
  - (b) any directions issued by the Minister; and
  - (c) any guidelines determined by the Director-General.

### Composition of Unemployment Insurance Board

- 49.** (1) The Unemployment Insurance Board consists of—
- (a) a chairperson, who has a deliberative vote in addition to a casting vote and is appointed by the Minister; 15
  - (b) twelve voting members appointed by the Minister; and
  - (c) the Commissioner, who has a vote.
- (2) Of the members referred to in subsection (1)(b)—
- (a) three members must be nominated by NEDLAC to represent organised labour; 20
  - (b) three members must be nominated by NEDLAC to represent organised business;
  - (c) three members must be nominated by NEDLAC to represent organisations of community and development interests; and 25
  - (d) three members must be appointed by the Minister to represent the interests of the State.
- (3) A member of the Board contemplated in—
- (a) subsection (1)(a) and (b) holds office for a period of three years and is eligible for reappointment; and 30
  - (b) subsection (1)(c) is in an official capacity a member of the Board.
- (4) A member vacates office if that member—
- (a) is removed from office by the Minister as contemplated in subsection (5); or
  - (b) resigns by written notice addressed to the Minister.
- (5) The Minister may remove a member from the Board— 35
- (a) in the case of any member contemplated in subsection (2)(a), (b) or (c), on the request of NEDLAC;
  - (b) for serious misconduct;
  - (c) for permanent incapacity;
  - (d) for being absent from three meetings of the Board without prior permission of the Board unless just cause is shown by the member; or 40
  - (e) for engaging in any activity that might undermine the functions of the Board.
- (6) If a member of the Board vacates office before the expiry of his or her period of office, the Minister must fill the vacancy in accordance with subsections (1) and (2) for the unexpired portion of that period. 45

### Constitution of Unemployment Insurance Board

- 50.** (1) The Board must as soon as possible after the appointment of its members, prepare and adopt a constitution subject to approval by the Minister.
- (2) The constitution of the Board—
- (a) must provide for— 50
    - (i) the establishment and functions of committees of the Board, which must include an appeals committee;
    - (ii) subject to subsection (3), the rules for convening and conducting meetings of the Board and its committees, including the quorum required, and for the keeping of minutes; 55
    - (iii) subject to section 49(1), the voting rights of the different members of, and the manner in which decisions are to be taken by, the Board and its committees;
    - (iv) a code of conduct for Board members;

- (v) the determination through arbitration of any dispute concerning the interpretation and application of the constitution;
- (vi) subject to subsection (4), a procedure for amending the constitution; and
- (b) may provide for—
  - (i) the delegation and assignment of powers and duties of the Board to its members, committees and employees: Provided that the Board may—
    - (aa) impose conditions for any delegation or assignment;
    - (bb) not be divested of any power or duty by virtue of the delegation of that power or assignment of that duty; and
    - (cc) may vary or set aside any decision made under any delegation or assignment; and
  - (ii) any other matter necessary for the performance of the functions of the Board.

(3) At least thirty days' notice must be given for a meeting of the Board at which a proposed amendment of the constitution is to be considered. 15

(4) A supporting vote of at least two thirds of the members of the Board and the approval of the Minister is required for an amendment of the constitution.

#### **Administration and provision of resources to Unemployment Insurance Board**

**51.** (1) The Commissioner is responsible for administering the affairs of the Board.

(2) In order to enable the Board to perform its functions effectively the Director-General must provide the Board with the necessary financial and administrative resources and, subject to the laws governing the Public Service, with the necessary personnel. 20

(3) As soon as it is practicable after the end of every month, the Commissioner must, after consultation with the Board— 25

- (a) determine the value of the service and resources provided by the Unemployment Insurance Fund to the Board; and
- (b) pay for the utilisation of these services and resources out of the Unemployment Insurance Fund.

#### **Remuneration and allowances to members of Unemployment Insurance Board** 30

**52.** A member of the Board or its committees 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.

#### **Indemnification of members of Unemployment Insurance Board**

**53.** A member of the Board is indemnified in respect of all proceedings, costs and expenses incurred by such member when defending or opposing legal proceedings arising out of *bona fide* acts of such member in terms of this Act. 35

### **CHAPTER 7**

#### **REGULATIONS**

#### **Regulations** 40

**54.** The Minister, after consultation with the Board, may make regulations regarding any matter—

- (a) arising from, or consequential to, the transitional provisions contemplated in Schedule 1; or
- (b) which it is necessary or expedient to prescribe in order to give effect to the purpose and provisions of this Act. 45

#### **Procedure when issuing regulations**

**55.** (1) Unless public interest requires a regulation to be issued without delay, the Minister must comply with the following procedure when intending to issue regulations:

- (a) The intention to issue the regulation must be announced by notice in the *Gazette* and at least one other means of communication circulated throughout the Republic;
- (b) the notice must state—
  - (i) that a draft regulation has been developed for comment; 5
  - (ii) the nature of the draft regulation;
  - (iii) where a copy of the draft regulation may be obtained; and
  - (iv) where comments are to be returned to;
- (c) a period of at least one month from the date of the announcement must be allowed for interested parties to comment on the regulation; and 10
- (d) the comments received and the content of all discussions and consultations must be considered before issuing or amending the regulation.
- (2) Subsection (1) does not apply—
  - (a) to any regulation correcting a textual error; or
  - (b) when the Minister withdraws any regulation or notice made or issued under the Unemployment Insurance Act, 1966 (Act No. 30 of 1966), as contemplated in item 2 of Schedule 1. 15
- (3) Any regulation affecting State revenue or expenditure may only be issued or amended with the concurrence of the Minister of Finance.

## CHAPTER 8 20

### GENERAL

#### **Information to be supplied by employer**

- 56.** (1) Every employer must, as soon as it commences activities as an employer, provide the information referred to in subsection (2) regarding its employees to the Commissioner, irrespective of the earnings of such employees. 25
- (2) The information contemplated in subsection (1) must—
- (a) include the street address of the business, and any of its branches, of the employer;
  - (b) if the employer is not resident in the Republic, or is a body corporate not registered in the Republic, include the particulars of the authorised person 30 who is required to carry out the duties of the employer in terms of this Act; and
  - (c) include the names, identification numbers and monthly remuneration of each of its employees, and must state the address at which the employee is employed.
- (3) Every employer must, before the seventh day of each month, inform the 35 Commissioner of any change during the previous month in any information furnished in terms of subsection (1).
- (4) The Commissioner may request the employer to provide such additional particulars as may reasonably be required to give effect to the purpose of this Act within 30 days of the request, or within such extended period as the Commissioner may allow. 40

#### **Creation and maintenance of database**

- 57.** (1) The Commissioner must create and maintain a database of contributors, beneficiaries and employers.
- (2) Payment of any benefit in terms of this Act must be based on the information contained in the database and provided— 45
- (a) by the contributor or dependant;
  - (b) in terms of section 56 of this Act; and
  - (c) in terms of the Unemployment Insurance Contributions Act.
- (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 50 information regarding social security.
- (b) For purposes of paragraph (a) the Commissioner must co-operate with other State institutions to link their respective databases.

### **Powers and duties of Director-General**

- 58.** (1) The powers and duties conferred or imposed on the Director-General in terms of this Act are in addition to the powers and duties conferred or imposed on the Director-General as head of the Department of Labour.
- (2) The Director-General must perform the fiduciary duties in respect of the Fund in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 5
- (3) Subject to such conditions as the Director-General may determine, the Director-General may delegate any power or assign any duty conferred or imposed on the Director-General in terms of this Act to any officer of the Fund.
- (4) Any power exercised or duty performed under a delegation or assignment in terms of this section must be regarded as having been exercised or performed by the Director-General. 10
- (5) A delegation or assignment in terms of this section does not limit the Director-General's authority to exercise the delegated power or perform the assigned duty. 15
- (6) The Director-General may, after consultation with the Board—
- (a) purchase or otherwise acquire immovable property required for purposes of this Act;
  - (b) alienate or let any immovable property so acquired; or
  - (c) permit the use of any immovable property so acquired to give effect to any other law on such terms as the Director-General may determine. 20
- (7) The Director-General may purchase or otherwise acquire any movable property required for purposes of giving effect to this Act, and may—
- (a) sell or otherwise write off losses and deficiencies in respect of this property; or
  - (b) permit the use of any movable property so acquired to give effect to any other law on such terms as the Director-General may determine. 25
- (8) Whenever the Director-General is of the opinion that any amount due to the Fund, or any amount paid by the Fund including moneys obtained fraudulently from the Fund, cannot or should not be recovered, the Director-General may direct that such amount be written off. 30
- (9) The Director-General may—
- (a) appoint agents or designate agency offices to serve as employment offices as may be necessary to assist the Director-General, Commissioner, Board or Fund in properly administering this Act; and
  - (b) confer on the agents or the officers of such offices such functions as may be necessary to give effect to this objective. 35
- (10) Notwithstanding section 10(1), if the Director-General is of the opinion that the income of the Fund is insufficient or is not increasing at the rate required to meet the expenditure of the Fund or to meet reasonably anticipated future applications for benefits, the Director-General must— 40
- (a) inform the Minister, the actuary and the Board of this fact; and
  - (b) after consulting with the Board make recommendations to the Minister on this matter.
- (11) The Director-General may borrow money on behalf of the Fund in terms of section 66(3)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 45
- (12) Notwithstanding section 11, the Director-General must within six months of the end of each financial year or as soon as practicable thereafter, submit a written report to the Minister regarding—
- (a) the manner in which the Board and the committees are performing their functions; 50
  - (b) the number of unemployed contributors to whom benefits have been paid and the total amount of such benefits;
  - (c) the number of contributors to whom illness, maternity and adoption benefits, respectively, have been paid and the total amount of such payments; and
  - (d) the number of deceased contributors in respect of whom dependant's benefits were paid and the total amount of such payments. 55
- (13) The report contemplated in subsection (12) together with the statement of income and expenditure and the balance sheet of the Fund, must be tabled in the National Assembly within 30 days after its receipt by the Minister if Parliament is then sitting and, if Parliament is not sitting, within fourteen days of the commencement of the next sitting. 60

### Certain instruments exempt from stamp duty

59. Any instrument issued in terms of this Act is exempt from stamp duty, if that duty is legally payable by the Fund.

### Recovery of losses caused by employees of Fund

60. (1) For purposes of this section, causing loss or damage to the Fund includes— 5
- (a) the making or authorising of—
    - (i) an irregular payment of Fund moneys;
    - (ii) a payment without a proper supporting voucher;
  - (b) the failure to carry out a duty leading to a fruitless expenditure of Fund moneys; 10
  - (c) a deficiency in any Fund moneys, stamps, securities, documents with face or potential value, or Fund property;
  - (d) damage to any Fund property; and
  - (e) an act or omission leading to a court claim against the Fund.
- (2) If an employee of the Fund causes any loss or damage to the Fund, the Director-General may— 15
- (a) institute an enquiry into the loss or damage;
  - (b) determine whether the employee is liable for the loss or damage;
  - (c) if the employee is found to be liable for the loss or damage, determine—
    - (i) the amount of the loss or damage; and 20
    - (ii) how and when the amount is to be paid by the employee; and
  - (d) notify the employee in writing of any determination made in terms of this subsection.
- (3) If, at the termination of an employee's employment, there remains any amount outstanding in respect of a determination made in terms of subsection (2), that outstanding amount may be deducted from any moneys due to the employee. 25
- (4) Any employee who is aggrieved by a determination made by the Director-General may, within 30 days of the date of notification in terms of subsection (2)(d), appeal to the Minister in accordance with the grievance procedure applicable to state employees.
- (5) Nothing in this section prevents the Director-General from— 30
- (a) instituting proceedings in a competent court to recover any loss or damage caused by an employee who is or was in the public service; or
  - (b) instituting disciplinary proceedings against an employee contemplated in paragraph (a); or
  - (c) instituting proceedings contemplated in both paragraphs (a) and (b). 35

### Recovery of loss generally

61. (1) For purposes of this section, loss or damage to the Fund means—
- (a) an employer's irregular payment or failure to pay moneys due to the Commissioner in terms of this Act or the Unemployment Insurance Contributions Act; 40
  - (b) a contributor's failure to inform the claims officer of the resumption of work during the period in respect of which benefits were being paid;
  - (c) payment of Fund moneys as a result of a false statement or fraudulent claim;
  - (d) any failure to comply with a duty imposed by the provisions of this Act leading to loss or damage to the Fund. 45
- (2) Any person who causes any loss or damage to the Fund, is guilty of an offence.
- (3) A court may, on convicting a person for the commission of an offence contemplated in subsection (2), determine the amount of the loss or damage caused to the Fund.
- (4) Any person found guilty of an offence as contemplated in subsection (2) must refund the loss to the Fund on such terms and conditions as the Director-General may determine. 50
- (5) The Director-General may permit payment of the amount in instalments.
- (6) If the loss to the Fund is due to a fraudulent benefit claim, the loss may be recovered from any outstanding benefit payments due to be made to the contributor or dependant under the provisions of this Act. 55
- (7) Nothing in this section prevents the Director-General from instituting legal proceedings in any competent court to recover any loss or damage caused to the Fund by any person.

## Evidence

**62.** (1) If any of the following documents are produced in a court of law, they are presumed to be certified by their author without proof of the author's signature unless evidence is led to the contrary:

- (a) A record of a decision made by the Director-General, the Board or any committee; 5
- (b) a copy of or extract from an entry in any book or record kept by the Director-General, the Board or any committee; or
- (c) any document filed with the Director-General, the Board or any committee.

(2) In any proceedings under this Act, an affidavit purporting to be made by the Director-General is evidence of any of the following facts stated in the affidavit: 10

- (a) That any person or body of persons is an employer or a contributor under this Act;
- (b) that any person is or was lawfully required under this Act to pay any amount to the Director-General; or 15
- (c) that any amount referred to in paragraph (b) or any portion thereof had or had not been paid on a date specified in the affidavit.

(3) (a) A presiding officer at the proceedings in which any affidavit referred to in subsection (2) is presented in evidence, may of his or her own accord, or must at the request of any party to the proceedings, require the deponent under subpoena to give oral evidence, or answer any written question submitted to the presiding officer under oath. 20

(b) Any question and answer from that deponent is admissible as evidence in the proceedings.

(4) A contributor is presumed, unless the contrary is proved, to remain in the employ of an employer until that employer has notified the Director-General that the contributor is no longer employed with that employer. 25

(5) In any proceedings under this Act, any of the following documents are admissible in evidence against an employer and constitute an admission of the facts contained in the document unless it is proved that the statement was not made by the employer:

- (a) A statement or entry contained in any book, record or document kept by any employer; 30
- (b) any such statement or entry found on any premises occupied by the employer;
- (c) any such statement or entry found on any vehicle used in the business of the employer; and
- (d) any copy or reproduction of any such statement or entry, certified by a commissioner of oath to be a true copy or reproduction of the original statement. 35

(6) No answer to any question put by a person in the course of an enquiry in terms of section 60(2)(a) or by a labour inspector may be used against that person in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement. 40

## Disclosure of information

**63.** (1) Subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information obtained by that person in the performance of functions contemplated in this Act, except— 45

- (a) to the extent to which it may be necessary for the proper administration of a provision of this Act;
- (b) for purposes of the administration of justice; or
- (c) at the request of the Minister, the Director-General or any other person entitled to the information. 50

(2) Any person who contravenes subsection (1) is guilty of an offence.

## General prohibited conduct

**64.** (1) No person may—

- (a) knowingly make a statement or cause a statement to be made which is materially false or which results in an incorrect payment of benefits in an application for benefits in terms of this Act; 55

- (b) wilfully make any false entry on a contributor's record card or any other book, record or document relating to either a contributor's employment history or to a contributor's claim for benefits; or
  - (c) contravene, or refuse or fail to fully comply with any provision of this Act or of any regulation or notice issued in terms of this Act. 5
- (2) Any person who contravenes subsection (1)(a), (b) or (c) is guilty of an offence.

### **Penalties**

65. Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment, or to both a fine and imprisonment.

### **Jurisdiction of Labour Court** 10

66. Unless this Act provides otherwise, the Labour Court has jurisdiction in respect of all matters in terms of this Act, except in respect of an offence in terms of this Act.

### **Stating of case to Labour Court**

67. (1) If any question of law arises concerning the application of this Act, the Director-General may of his or her own initiative, or at the request of a party with sufficient interest in this matter, state a case for decision by the Labour Court. 15

(2) The Director-General must set out in the stated case—

- (a) the facts that were found to be proved; and
- (b) the view of the law which was adopted in relation to those facts.

(3) If the Director-General has any doubt as to the correctness of a decision given by the Labour Court regarding a question of law concerning the application of this Act, the Director-General may submit such decision to the Labour Appeal Court. 20

### **Delegation and assignment by Minister**

68. (1) The Minister may in writing delegate or assign to the Director-General or any employee in the public service, any power or duty conferred or imposed upon the Minister in terms of this Act, except the Minister's powers in terms of sections 43, 47, 48(2)(b), 50(1) and (4), 52, this section, section 69 and the Minister's power to make regulations or to issue notices. 25

(2) A delegation or assignment in terms of subsection (1) does not limit or restrict the Minister's authority to exercise or perform the delegated power or assigned duty. 30

(3) Any person to whom a power is delegated or a duty is assigned in terms of subsection (1) must exercise or perform that power or duty subject to the direction of the Minister.

(4) The Minister may at any time—

- (a) withdraw a delegation or assignment made in terms of subsection (1); and 35
- (b) withdraw or amend any decision made by a person exercising or performing a power or duty delegated or assigned in terms of subsection (1).

### **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. 40

(2) The procedure referred to in section 55(1) applies with the necessary changes to a notice issued under subsection (1). 45

### **Repeal of laws**

70. The Unemployment Insurance Act, 1966 (Act No. 30 of 1966), is hereby repealed except to the extent mentioned in Schedule 1.

**Transitional arrangements**

71. The provisions of Schedule 1 apply to the transition from other laws to this Act.

**Act binds State**

72. This Act binds the State.

**Short title and commencement**

5

73. (1) This Act is called the Unemployment Insurance Act, 2001, and takes effect on a date to be fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

## SCHEDULE 1

### TRANSITIONAL ARRANGEMENTS

#### Definitions

1. In this Schedule “Unemployment Insurance Act, 1966” means the Unemployment Insurance Act, 1966 (Act No. 30 of 1966). 5

#### Regulations

2. Any regulation made under the Unemployment Insurance Act, 1966, which is in force immediately before the commencement of this item, remains in force until withdrawn by the Minister by notice in the *Gazette*.

#### Transferral of assets, liabilities, rights and obligations of Unemployment Insurance Fund 10

3. All assets, liabilities, rights and obligations of the Unemployment Insurance Fund established under the Unemployment Insurance Act, 1966, are hereby transferred to the Fund established by section 4.

#### Continuity of Unemployment Insurance Board 15

4. (1) The Board and its subcommittees, established under the Unemployment Insurance Act, 1966, continue to exist until the Minister establishes the Board in terms of section 47.

(2) The members of the Board appointed under the Unemployment Insurance Act, 1966, remain in office until the Minister has appointed the members of the Board in terms of section 49. 20

#### Claims against Unemployment Insurance Fund

5. All claims against the Fund made under the Unemployment Insurance Act, 1966, remain in force and must be finalised in terms of that Act.

#### Appeals against decisions of claims officers 25

6. (1) Any appeal in terms of the Unemployment Insurance Act, 1966, against a decision of claims officers remains in force and must be finalised in terms of that Act.

(2) For purposes of subitem (1), the Benefit Appeals Committees established under the Unemployment Insurance Act, 1966, continue to exist until all appeals have been dealt with. 30

#### Investigations and prosecutions

7. (1) Any investigation undertaken in terms of the Unemployment Insurance Act, 1966, which is not completed at the commencement of this Act, must be finalised in terms of that Act.

(2) Any prosecution instituted in terms of the Unemployment Insurance Act, 1966, which is not completed at the commencement of this Act, must be finalised in terms of that Act. 35

#### Duty of employer to provide particulars of employees at commencement of this item

8. (1) Within seven days after the commencement of this item, every employer must provide the information specified in section 56(2) of all employees employed with it to the Commissioner, irrespective of the earnings of such employees.

(2) The Commissioner may request the employer to provide, within 30 days of the request, or within an extended period as the Commissioner may allow, such additional particulars as may be reasonably required to give effect to the purpose of this Act. 45

## 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. 5
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** 10

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. 15

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** 20

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. 25

##### *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. 30

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. 35

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). 40

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

$$\text{IRR} = 29.2 + (99779.68 / (3239.6 + Y_1))$$

where  $Y_1$  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.) 45

### 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: 5

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

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

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

### 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. 10 15

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. 20
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. 25

### 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 30

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. 35

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:

$$Y_i = (x_i - x_1) Y_{LRR} / (x_2 - x_1) \quad (1) \quad 40$$

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. 45

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

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

$$x_1 = 2$$

$$x_2 = 7$$

Using these values, expression (1) can be simplified to: 50

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

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:

$$y = 1 / x \quad (2) \quad 5$$

thus:

$$y_1 = 1 / x_1$$

$$y_2 = 1 / x_2$$

$$y_i = 1 / x_i$$

3. The  $y_1$  value is then converted to the corresponding IRR. The formula for this is: 10

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

where:

IRR is the income replacement rate;

LRR is the lower (minimum) income replacement rate; and 15

URR is the upper (maximum) income replacement rate.

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

$$LRR = 38\%$$

$$URR = 60\%$$

$$y_1 = 1/2 \quad 20$$

$$y_2 = 1/7$$

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

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

**SCHEDULE 3****SCALE OF CONTRIBUTOR'S ENTITLEMENT TO BENEFITS***(Section 12(2))*

(1) Table One is the scale of benefits to which a contributor may be entitled. A contributor's monthly rate of remuneration is set out in column 1. The percentage of the contributor's monthly income that will be paid as a benefit is set out in column 2. The actual benefit payable in Rand terms is set out in column 3. 5

(2) Benefits below the transitional income level are earnings-related and fall as a proportion of income as income rises.

(3) Contributors and employers of contributors earning above the income threshold of R97 188 per annum shall contribute 1% of the threshold and such income contributors shall receive benefits payable at this threshold level. 10

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 15

IRR = Income replacement rate

Approximate benefits payable on monthly basis

Income	IRR = UI benefit		20
	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		25
	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.

## **MEMORANDUM ON THE OBJECTS OF THE UNEMPLOYMENT INSURANCE BILL, 2001**

### **BACKGROUND**

1.1 In 1996 a task team comprising experts from labour, business and the academia was appointed to perform an analysis of the administration of unemployment insurance, conduct a comparative analysis based on international norms and make recommendations regarding the findings and the financing thereof.

1.2 The task team recommended that—

- \* coverage be extended to all workers with minimum exclusions;
- \* gender discrimination be removed by separating maternity and unemployment benefits;
- \* a progressive (graduated) benefit schedule be implemented;
- \* the existing types of benefits be retained;
- \* stricter enforcement and compliance measures be introduced;
- \* a computerised database be introduced;
- \* all stakeholders be included in the processes and structures of the Unemployment Insurance Fund (“the UIF”); and
- \* limited executive powers be given to the Unemployment Insurance Board.

1.3 In December 1998, the Minister of Labour released the report on the restructuring of the UIF. The document was published and the public invited to make submissions to the Unemployment Insurance Board, which had been tasked to draft new legislation.

1.4 On 2 February 2000, Cabinet approved the Unemployment Insurance Bill and the Unemployment Insurance Contributions Bill. The latter Bill deals with the collection of unemployment insurance contributions from employers and is intended to consolidate collections under a single administration—the South African Revenue Services.

1.5 While the Unemployment Insurance Bill will be administered by the Department of Labour, the Unemployment Insurance Fund will be responsible for the administration and adjudication of claims, a practice and approach which is in line with those adopted by similar institutions the world over.

### **MAIN REFORMS PROPOSED**

2.1 The restructuring of the UIF seeks to address the following shortcomings within the current legislation:

- \* The limited and non-viable nature of coverage;
- \* weak enforcement and compliance measures;
- \* the lack of financial sustainability and the development of the Fund’s financial reserves;
- \* the rigid benefit structure;
- \* discrimination against certain categories of employees;
- \* lack of a comprehensive database of contributors.

#### **The extension of coverage**

2.2 Coverage of workers within the labour market will be extended to employees earning above the current UIF annual income threshold of R97 188. The inclusion of higher income groups as UIF contributors will be effected by employing a maximum income threshold to be determined from time to time.

#### **Graduated benefit schedule**

2.3 Instead of the current scheme of 45% income replacement, it is proposed in the Bill that a graduated benefit schedule be introduced and that benefits be based on income replacement ranging from 60% for low-income earners to 30% for the middle and high-income earners.

#### **“Delinking” of maternity and unemployment benefits**

2.4 The current benefit system has the effect that women drawing maternity benefits use up their unemployment benefit. This discriminates against women. It is therefore proposed in the Bill that maternity and unemployment benefits be separated so that

employees who go on maternity leave should do so without having to deplete their unemployment benefits.

#### Strengthening compliance and enforcement measures

2.5.1 The Bill seeks to address the high levels of employer default and non-compliance by proposing the introduction of tougher penalties and fines on those employers who fail to comply with the requirements and provisions of the Bill. This measure is further strengthened by the proposals to bring the UIF collection regime under the ambit of functions of the South African Revenue Service (“SARS”) and its enabling legislation, the Income Tax Act, 1962 (Act No. 58 1962).

2.5.2 Wide-ranging measures are proposed in the Bill to deal with aspects of non-compliance, such as under-disclosure of employee earnings, working and drawing, non-payment and deliberate misrepresentations. These measures are deemed sufficient to stop employer and employee fraud and it is anticipated that they will enhance the capacity to identify and prosecute defaulters.

#### Creation of contributors database

2.6 The creation of an electronic contributors database containing contribution records for each contributor is proposed. This will eliminate paper-based operations. It will also eliminate the potential for the submission of fraudulent claims. This measure will also increase compliance by requiring employers to submit declarations listing those in their employ, their income and any other detail that may be prescribed.

#### Dispute resolution measures

2.7 The Bill proposes two different avenues of dispute resolution: All disputes relating to SARS will be dealt with under the current provisions of the Income Tax Act, 1962, while those arising from the decisions of the UIF will be dealt with through the Commission for Conciliation, Mediation and Arbitration and the Labour Court.

#### Financial management and actuarial assessments

2.8 In order to ensure sound financial management, the Bill sets out clear rules and guidelines on financial management in line with the Public Finance Management Act, 1999 (Act No. 1 of 1999). The Bill also contains provisions regarding the performance of annual actuarial assessments to determine the soundness of the Fund’s finances and reserves to fund statutory commitments, as well as provisions requiring the Minister of Labour to be advised on the available funding alternatives, without having to resort to the fiscus.

#### Entitlement and benefits

2.9 The retention of the current five statutory benefits, viz for unemployment, maternity, illness, adoption and dependants is proposed. However, benefits will be accumulated up to and limited to 34 weeks in any given four-year period. This measure will eliminate a loophole that exists in the current Act.

### CONSULTATION

#### Public comment

3.1 After the submission of the report by the task team referred to above, a position paper in response to the report was released in September 1997. The report was published in the Government Gazette on 5 February 1999 for public comment together with the task team report. This initiated the drafting of the Bill.

3.2 During the drafting of the Bill, government engaged in on-going consultations with the Unemployment Insurance Board. The public comments were also considered during this process.

3.3 The drafting of the Bill was concluded in early 1999 and submitted to the Minister for consideration. After further revision, the Bill was published in the Government Gazette for public comment on 2 March 2000. These comments were considered and, where appropriate, accommodated in the Bill.

#### NEDLAC process

3.4 The Bill was submitted to NEDLAC on 2 March 2000. A negotiating committee comprising representatives from business, government and labour was established to consider the Bill. The negotiating committee first met on 29 March 2000. At this meeting business and labour stated that the Unemployment Insurance Contributions Bill should be negotiated in conjunction with the UIB as they were mutually dependent, although that Bill would be tabled by the Minister of Finance as is required by the Constitution. Both Bills were thereafter discussed in NEDLAC. Negotiations were held on various dates and this process was concluded at the end of August 2000.

#### FINANCIAL IMPLICATIONS

4. A very short-term financing strategy will have to be discussed between the National Treasury and Department of Labour, which will address the cashflow problems of the UIF only for the period up to 2002. Otherwise, the State will not be called upon to contribute or even guarantee the Fund.

#### PARLIAMENTARY PROCEDURE

5. The State Law Advisers and the Department of Labour are of the view 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.



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