

REPUBLIC OF SOUTH AFRICA

UNEMPLOYMENT INSURANCE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 37435 of 11 March 2014)
(The English text is the official text of the Bill)*

(MINISTER OF LABOUR)

[B 7—2014]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Unemployment Insurance Act, 2001, so as to provide for the extension of the unemployment insurance benefits to learners who are undergoing learnership training and civil servants; to adjust the accrual rate of a contributor's entitlement to unemployment insurance benefits; to finance employment services; to extend a contributor's entitlement to benefits under certain circumstances; to provide for the process of application for maternity benefits; to repeal some enforcement provisions; to empower the Unemployment Insurance Board to provide in its constitution for the functions of regional appeals committees; to amend the Schedule 2 to the Unemployment Insurance Act, 2001, so as to provide for the adjustment of the Income Replacement Rate; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 63 of 2001, as amended by section 2 of Act 32 of 2003

1. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 5
- “(1) This Act applies to all employers and employees, other than [—] members of parliament, cabinet ministers, deputy ministers, members of provincial legislatures and municipal councillors, and 10
- [(a)]employees employed for less than 24 hours a month with a particular employer and their employers[;]. 15
- [(b) employees under a contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998), and their employers;**
- (c) employees in the national and provincial spheres of government who are officers or employees as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and their employers;**
- (d) monthly pension from the state refers to a grant given to the aged by the state in terms of the Social Assistance Act 59 (Act 59 of 1992) as amended.]”.**

Amendment of section 5 of Act 63 of 2001

2. Section 5 of the principal Act is hereby amended by the addition after paragraph (c) of the following paragraph:

“(d) finance the retention of contributors in employment and the re-entry of contributors into the labour market and any other scheme aimed at the vulnerable workers.” 5

Amendment of section 7 of Act 63 of 2001

3. Section 7 of the principal act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The money of the Fund other than the 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] Corporation to be invested [in terms of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984)] in accordance with the Public Investment Corporation Act, 2004 (Act No. 23 of 2004), and any other applicable law.” 10 15

Amendment of section 12 of Act 63 of 2001

4. Section 12 of the principal Act is hereby amended—

(a) by the addition after subsection (1A) of the following subsection:

“(1B) A contributor employed in any sector who loses his or her income due to reduced working time, despite still being employed, is entitled to benefits if the contributor’s total income falls below the benefit level that the contributor would have received if he or she had become wholly unemployed, subject to that contributor having enough credits.”;
and 20

(b) by the addition in subsection (3) of the following paragraphs: 25

“(b) For the purposes of Part D, maternity benefits must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold set in terms of paragraph (a).

(c) Subject to section 13(3), the benefit for—

(i) the first 238 days of benefits is paid at the income replacement rate set in terms of paragraph (b); 30

(ii) the remainder of credits is paid at a flat rate of 20.”.

Amendment of section 13 of Act 63 of 2001, as amended by section 5 of Act 32 of 2003

5. Section 13 of the principal Act is hereby amended— 35

(a) by the substitution for subsection (3) of the following subsection:

“(3) (a) 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]~~ five days of employment as a contributor subject to a maximum accrual of ~~[238]~~ 365 days benefit in the four year period immediately preceding ~~[the date of application for benefits]~~ the day after the date of ending of the period of employment in terms of this Chapter ~~[less any days of benefit received by the contributor during this period.]~~; 40

(b) Unemployment benefits must be paid to the unemployed contributor regardless of whether the contributor have received benefits within that four year circle or not if the contributor has credits.; 45

(b) by the substitution for subsection (5) of the following subsection:

“(5) (a) 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. 50

(b) The payment of maternity benefits may not affect the payment of unemployment benefits.; and

(c) by the substitution for subsection (6) of the following subsection:

“(6) **[For the purposes of calculating the benefits of a contributor contemplated in section 12(1A), the total income derived from continued employment plus the amount of benefits calculated may not exceed the benefits that would have been paid if the contributor had become wholly unemployed.]** If an application for benefits is made within the four year cycle of a previous claim then the Fund must subtract the number of days in respect of which benefits have already been paid in that cycle.” 5

Amendment of section 14 of Act 63 of 2001, as amended by section 94 of Act 20 of 2006 10

6. Section 14 of the principal Act is hereby amended by the deletion of paragraph (a).

Amendment of section 17 of Act 63 of 2001

7. Section 17 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 15

“(2) The application must be made within **[six]** 12 months of the termination of the contract of employment, but the Commissioner may accept an application made after the **[six]** 12 month time limit has expired on just cause shown.”.

Amendment of section 20 of Act 63 of 2001

8. Section 20 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 20

(a) if the period of illness is less than **[14]** seven days; and”.

Amendment of section 24 of Act 63 of 2001, as amended by section 8 of Act 32 of 2003

9. Section 24 of the principal Act is hereby amended— 25

(a) by the substitution for subsection (5) of the following subsection:

“(5) A contributor who has a miscarriage during the third trimester or bears a still-born child is entitled to a **[maximum]** full maternity benefit of **[six]** 17,32 weeks **[after the miscarriage or stillbirth]**”; and

(b) by the addition after subsection (5) of the following subsections: 30

“(6) A contributor is not entitled to benefits unless she was in employment, whether as a contributor or not for at least 13 weeks before the date of application for maternity benefits.”.

Amendment of section 25 of Act 63 of 2001

10. Section 25 of the principal Act is hereby amended— 35

(a) by the substitution for subsection (1) of the following subsection:

“(1) an application for maternity benefits must be made in the prescribed form at an employment office **[at least eight weeks before childbirth]**.”; and

(b) by the deletion in subsection (2) of paragraph (a). 40

Amendment of section 30 of Act 63 of 2001

11. Section 30 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) within **[six]** 18 months of the death of the contributor except that, on just cause shown, the Commissioner may accept an application after the **[six]** 18 month period.”; 45

- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) the surviving spouse or life partner has not made an application for the benefits within **[six]** 18 months of the contributor’s death.”; and
- (c) by the insertion after subsection (2) of the following subsection: 5
 “(2A) (a) Any nominated beneficiary of the deceased contributor may claim dependent’s benefits subject to paragraph (b).
 (b) A nominated beneficiary will qualify for benefits if there is no surviving spouse, life partner or dependent children of the deceased contributor.”. 10

Amendment of section 33 of Act 63 of 2001

12. Section 33 of the principal Act is hereby amended by the addition of the following subsection:

- “(3) When processing application for benefits neither the fund nor any agency or person purporting to act on behalf of the applicant may levy any charge against the applicant.” 15

Amendment of section 36A of Act 63 of 2001, as inserted by section 10 of Act 32 of 2003

13. Section 36A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

- “(1) The **[Minister must, after consultation with the Board,]** Board must appoint a regional appeals committee for each region determined by the Minister.”.

Repeal of section 38, 39, 40 and 41 of Act 63 of 2001

14. Sections 38, 39, 40 and 41 of the principal Act are hereby repealed.

Amendment of section 50 of Act 63 of 2001 25

15. Section 50 of the principal Act is hereby amended by the insertion in subsection (2)(a) after subparagraph (i) of the following subparagraph:

- “(iA) the functions of a regional appeals committee;”.

Amendment of section 56 of Act 63 of 2001

16. Section 56 of the principal Act is hereby amended— 30

- (a) by the substitution for subsection (3) of the following subsection:
 “(3) Every employer must, before the seventh day of each month, **[inform] provide** the Commissioner **[of any change during]** with all information for the previous month **[in any information furnished]** in terms of subsection (1).”; and 35
- (b) by the insertion of subsection (3A) after subsection (3):
 “(3A) The Minister will issue regulation on a special dispensation applicable to domestic employers and small businesses or enterprises regarding the submission of information in subsection (3).”.

Amendment of Schedule 2 to Act 63 of 2001 40

17. Schedule 2 to the principal Act is hereby amended by the substitution for the second paragraph under the heading “*Income Replacement Rate*” of the following paragraph:

- “The Income Replacement Rate (IRR) is at its maximum when income equals zero, and it reaches its minimum where income is equal to the benefit transition 45
 income level. The maximum IRR is **[fixed]** currently set at 60%. The minimum IRR is **[fixed]** currently set at 38%. However, the Minister may, in consultation with NEDLAC, vary the minimum**[IRR]**, maximum Income and flat replacement rate in terms of section 12(3)(b) but cannot reduce the minimum IRR to any”.

percentage below 38%. The Minister may from time to time vary the IRR and the benefit period by regulations.”.

Short title

18. This Act is called the Unemployment Insurance Amendment Act, 2014.

MEMORANDUM ON THE OBJECTS OF THE UNEMPLOYMENT INSURANCE AMENDMENT BILL, 2014

1. BACKGROUND

The Unemployment Insurance Act, 2001 (Act No. 63 of 2001) (the Act), came into operation on 1 April 2002. The purpose of the Act is to establish an Unemployment Insurance Fund (UIF) 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. As a result harmful economic and social effects of unemployment are alleviated. In order to improve service delivery by the Fund the Unemployment Insurance Board decided to recommend to the Minister that the following amendments to the Unemployment Insurance Act should be made.

2. AMENDMENTS PROPOSED

Clause 1

2.1 Section 3 excludes employees who are under contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998), and their employers, employees in the national and provincial spheres of government who are officers or employees as defined in section 1 of the Public Service Act, 1994, and those who are fixed term workers who are required to leave the Republic on expiration of their term. Exclusion of these categories of employees is unconstitutional and against the clauses in the relevant ILO Conventions. The continued exclusion may invite constitutional challenges. Clause 1 of the Bill seeks to amend section 3 of the Act by repealing subsection (1)(b), (c) and (d) so that the above categories of employees and their employers can be covered. It is therefore, advisable that subsections (b), (c) and (d) should be repealed so that the above categories of employees and their employers can be covered.

Clause 2

2.2 Clause 2 of the Bill seeks to amend section 5 of the Act by providing for the financing of the re-entry of the unemployed insurance beneficiaries to the labour market. The proposed amendment will make it permissible for the Fund to finance re-entry of the unemployed insurance beneficiaries to the labour market as envisaged in section 12(1)(a) of the Employment Services Bill.

Clause 3

2.3 Clause 3 of the Bill seeks to amend section 7(1) of the Act in order to bring it in line with the Treasury Regulations, and must be amended as follows:

The money of the Fund other than money required to meet the current expenditure of the Fund must be deposited on behalf of the Fund with the Public Investment Corporation Ltd to be invested in accordance with the Public Investment Corporation Act, 2004 (Act No 23 of 2004), and other applicable legislation.

Clause 4

2.4 Section 12(3) provides for the applicable rates of benefits. The proposed insertion of paragraph 12(3)(c) and (d) is aimed at providing an increased payment rate of maternity benefits. The new maternity rate will be 66% of the earnings of the beneficiary at the time of the application. This provision also provide for the income replacement rate of 20% payable after 238 days until 365 days.

Clause 5

2.5 Section 13(3) of the Act provides that a contributor's entitlement to benefits 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 in a four year period. The proposed amendment will change the maximum accrual of 238 days to 365 days in a four year period. This will extend the period of payment of an unemployed contributor from eight months to twelve months. Beneficiaries will also accrue one day's benefit for every four days of employment as a contributor.

Clause 6

2.6 Section 14(a) states, inter alia, that a contributor is not entitled to benefits for any period that a contributor was in receipt of benefits from Compensation Fund or benefits from any unemployment fund or scheme. Since similar provisions of this section (a person receiving a monthly pension from the State) have been repealed by the Revenue Laws Amendment Act, 2006, it is hereby proposed that these provisions should also be repealed because they serve no purpose.

Clause 7

2.7 Clause 7 of the Bill seeks to amend section 17(2) by extending the period of application for unemployment insurance benefit from 6 months to 12 months after the termination of the contract of employment.

Clause 7 of the Bill also seeks to provide that the Commissioner may accept an application made after the expiry of a 12 months' time limit on just cause shown.

Clause 8

2.8 Section 20(2) provides that illness benefits cannot be accessed if the illness is less than 14 days. The proposed amendment are reducing the period from fourteen days to seven days.

Clause 9

2.9 Clause 9 of the Bill seeks to amend section 24 of the Act by providing that a contributor who has a miscarriage during the 3rd trimester or bears a still-born child, is entitled to a full maternity benefit of 17 to 32 weeks.

Clause 9 also provides that a contributor is not entitled to benefit unless she was in employment, whether as a contributor or not for at least 13 weeks before the date of application for maternity benefit.

Clause 10

2.10 Section 25(1) stipulates that application for maternity benefits must be made in the prescribed form at an employment office at least eight weeks before child birth. This stipulation confuses people out there in the labour centres because if one submits an application form at least eight weeks before child birth and one is not yet on maternity leave, nothing happens to it because the system is designed to pick up termination of employment. Eight weeks stipulation should therefore be deleted. Section 25(2) which refers to eight weeks should also be deleted.

Clause 11

2.11 Section 30(1)(b) states that an application for dependant's benefits must be made 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. Here the problem is the same as one in paragraphs 5, 6 and 8 and should be addressed as proposed there.

Clause 12

2.12 Clause 12 of the Bill seeks to amend section 33 of the Act by prohibiting the fund, agency or any person purporting to act on behalf of the applicant to levy any charge against the applicant.

Clause 13

2.13 Clause 13 of the Bill seeks to amend section 35(a) of the Act by giving powers to the Board to appeal to the regional appeals committee for each region determined by the Minister.

Clause 14

Clause 14 of the Bill seeks to repeal sections 38, 39, 40 and 41 of the Act.

Clause 15

2.15 Section 50 deals with the adoption of a constitution by the Board which must provide for the establishment and function of committees of the Board which must include an appeals committee. When the Unemployment Insurance Act was amended in 2003 it produced unintended consequences in that the Regional Appeals Committee was never made a committee of the Board. In order to remedy this section 50(2)(a)(i) should be amended by insertion of the Regional Appeals Committee in the said subsection.

Clause 16

2.16 Section 56 provides, *inter alia*, that every employer must inform the Commissioner of any change which occurred during the previous month. The proposed amendment requires the employers to provide the Commissioner with all the information not just changes only.

Clause 17

2.17 Schedule 2 read with Section 12(3)(b) of the Act to be amended.

The amendment will improve benefits from 38%—60% to 45%—65%. The amendment will also enable the Minister to change/vary both minimum Income Replacement Rate and the maximum Income Replacement Rate without having to go to Parliament. The present position is that the Minister can vary the minimum Income Replacement Rate only. Once the amendment becomes law the Minister will simply use a regulation to vary either the minimum or maximum or both.

3. CONSULTATION

The following bodies were consulted: The Unemployment Insurance Board was consulted and they recommended the amendments. Nedlac was consulted on the previous draft which is now updated.

4. FINANCIAL IMPLICATIONS FOR STATE

The Bill has the following financial implications for the State: The actuaries indicated that the proposed amendment will not have major effects on the financial standing of the fund. The actuaries recommended the proposed amendments.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Labour are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.