
GENERAL NOTICE

NOTICE 738 OF 2013

DEPARTMENT OF LABOUR

UNEMPLOYMENT INSURANCE AMENDMENT BILL

1. I, **NELISIWE MILDRED OLIPHANT**, Minister of Labour, hereby publish proposed amendments to the Unemployment Insurance Act, 2001, for general information and representations.
2. I have also tabled this bill at NEDLAC for consideration.
3. Submission of representations
 - a. All interested parties are invited to submit written representations on the Bill.
 - b. Such representations should be addressed to Advocate Mazwiogwani Cornelius Phathela, Unemployment Insurance Commissioner, P O Box 1851, Pretoria, 0001, or faxed to 086 270 6457 or e-mailed to MazwiogwaniCornelius.Phathela@labour.gov.za
 - c. Representations should reach the Unemployment Insurance Commissioner not later than 19 August 2013.


N M OLIPHANT, MP

MINISTER OF LABOUR

11/07/2013

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. 36674 of 19 July 2013) (The English text is
the official text of the Bill)*

(MINISTER OF LABOUR)

[B — 2013]

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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, civil servants and foreign workers who are within the country; 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:

"(1) This Act applies to all employers and employees, other than members of parliament, cabinet ministers, deputy ministers, members of provincial legislatures and municipal councilors; and

[(a)] employees employed for less than 24 hours a month with a particular employer and their employers[;].

[(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;]".

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."

Amendment of section 7 of Act 63 of 2001

3. Section 7 of the principal act is hereby amended by substitution of 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] must** 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 legislation."

Amendment of Section 12 of Act 63 of 2001

4. Section 12 of the principal Act is hereby amended by the addition in subsection (3) of the following paragraphs:

"(c) 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).

(d) 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);

(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 by—

(a) 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]~~ four 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.]~~.";

(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.

(b) 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.

(b) The payment of maternity benefits may not affect the payment of Unemployment benefits." and

(c) 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.]

(6) 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."

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

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

Amendment of section 15 of Act 63 of 2001

7. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) For the purpose of this Part, the period of unemployment is deemed not to have commenced until the contributor has lodged an application for benefits with the Fund, and the date of unemployment is deemed to be the date of application for benefits."

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:

'(2) The application must be made within **[six]** twelve months of the termination of the contract of employment, but the Commissioner may accept an application made after the **[six]** twelve 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:

"(2) A contributor is not entitled to illness benefits—

(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 by—

(a) 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 to 32 weeks **[after the miscarriage or stillbirth]**; and

(b) the addition after subsection (5) of the following subsection:

(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 by—

(a) 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) the deletion in subsection (2) of paragraph (a).

Amendment of section 30 of Act 63 of 2001

11 Section 30 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

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

Section 30 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

" the surviving spouse or life partner has not made an application for the benefits within **[six] eighteen (18)** months of the contributor's death."

Section 30 of the principal Act is hereby amended by the insertion of subsection (2A) after subsection (2) :

(2A)(a) Any nominated beneficiary of the deceased contributor may claim dependent's benefits.

(b) A nominated beneficiary will qualify for benefits if there is no surviving spouse, life partner or dependent children of the deceased contributor.

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."

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

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

Amendment of section 36A of Act 63 of 2001 as inserted by s. 10 of Act No. 32 of 2003.

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

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

Amendment of section 50 of Act 63 of 2001

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 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).”

Amendment of Schedule 2 to Act 63 of 2001

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 income level. The maximum IRR is **[fixed]** currently set at 60%. The

minimum IRR is [fixed] currently set at 38%. However, the Minister may 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 45%. The Minister may from time to time vary the IRR and the benefit period by regulations.”.

Short title

18. This bill Act is called the Unemployment Insurance Amendment Act, Bill, 2013.

MEMORANDUM ON THE OBJECTS OF THE UNEMPLOYMENT INSURANCE AMENDMENT BILL, 2013

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, can benefit. In that regard, the harmful economic and social effects of unemployment can be alleviated. In order to improve service delivery by the Fund, the Unemployment Insurance Board decided to recommend to the Minister that the Act should be amended so as to meet these demands.

2. OBJECTS OF BILL

2.1 The Bill seeks to---

(a) adjust contributor's entitlement to benefits and extend the unemployment insurance benefits so as to benefit the employees who are under contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998) and employees as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); and

(b) make certain adjustments in respect of Income Replacement Rate (IRR) and also amend the constitution of the Unemployment Insurance Board so as to provide for the functions of the regional appeals committee.

3. OVERVIEW OF BILL

Clause 1

3.1 The Bill seeks to amend section 3 of the Act by extending unemployment insurance benefits to employees who are under contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998) and employees as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Clause 2

3.3 The Bill seeks to amend section 5 of the Act so as to make provisions for the refinancing of the unemployed insurance beneficiaries to make re- entry to the Labour market.

Clause 3

3.3 The Bill seeks to amend section 7(1) of the Act which deals with the investment of money of the Unemployment Insurance Fund. The Bill also seeks to provide for the money of the Unemployment Insurance Fund, other than the money required to meet the current expenditure of the Fund to be deposited on behalf of the Fund with the Public Investment Corporation in accordance with the Public Investment Corporation Act, 2004 (Act No.23 of 2004) and other applicable legislation.

Clause 4

3.4 The Bill seeks to amend section 12 of the Act by providing for the rate of the payment of maternity benefits.

Clause 5

3.5 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 four days of employment as a contributor subject to a maximum accrual of 365 days. It has been found that the maximum of 238 days is not in line with Schedule 2 as proposed in the Act. In order to address this anomaly, an amendment to section 13 of the Act is proposed in order to provide for 365 days instead of 238 days.

Clause 6

Section 13 is further amended by the insertion of a new provision which seeks to allow contributors to claim benefits if they have credits regardless of whether they claimed within that four year circle.

Clause 7

3.6 Section 14(a)(ii) and (iii) of the Act provides that, amongst other things, 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, the Bill seeks to repeal paragraph (a) of section 14 of the Act to be in line with Revenue Laws Amendment Act, 2006.

Clause 8

3.7 The Bill seeks to amend section 15 of the Act so as to provide that the date of unemployment is deemed to be the date of the application of benefits

Clause 9

Section 17 is amended in order to increase the period of submitting application for unemployment benefits. Currently applications must be submitted within six months and the proposal is to extend the period for submitting unemployment benefits from six to twelve months.

Clause 10

3.8 The Bill seeks to amend section 20 of the Act so as to provide that a contributor is entitled to illness benefits if the days of illness are less than 14 days.

Clause 11

3.9 The Bill seeks to amend section 24 of the Act so as to provide for a period when a contributor is entitled for maternity benefits in case of miscarriage.

Clause 12

3.10 Section 25(1) of the Act stipulates that an application for maternity benefits must be made in the prescribed form at an employment office at least eight weeks before child birth. If a person submits an application form at least eight weeks before child birth and that person is not yet on maternity leave, the application is not considered. The Bill seeks to amend section 25 of the Act and provide for the application to be made within two weeks of the date of commencement of maternity leave.

Clauses 13

3.11 The Bill seeks to amend section 26 of the Act by providing that the maternity benefits must be paid at a flat rate of 66% of the last earnings of a contributor.

Clause 14

3.12 The Bill also seeks to amend section 30 of the Act by extending a period in which the dependents may apply for benefits on behalf of the deceased from six months to 18 months.

Clause 15

Section 30 is further amended by the insertion of a new provision allowing contributors to nominate their beneficiaries in cases of death benefits.

Clause 16

3.13 The Bill also seeks to amend section 33 of the Act by prohibiting any agency or a person purporting to be acting on behalf of the applicant to levy any charge or levy against the applicant.

Clause 14

3.14 The Bill seeks to repeal sections 38, 39, 40 and 41 of the Act.

Clause 15

3.15 Section 50 of the Act deals with the adoption of a constitution by the Board which must provide for the establishment and function of committees of the Board and which must include an appeals committee. When the Act was amended in 2003 the regional appeals committee was never made a committee of the Board. In order to remedy that, the Bill seeks to amend section 50(2)(a)(i)

of the Act by giving powers to the Unemployment Insurance Board to stipulate functions of the regional appeals committee.

Clause 16

3.16 The Bill seeks to amend Schedule 2 of the Act so as to empower the Minister to vary the Income Replacement Rate and the benefit period through Regulations.

4. CONSULTATION

The following bodies were consulted:

- The Unemployment Insurance Board which is constituted by appointees of NEDLAC.
- National Treasury

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill has the following financial implications for the State:

- The Actuaries has issued a report on the proposed amendments and their findings is that the proposed amendments are not going to have a negative impact on the Financial status of the Fund and that the Fund be able to cover the cost of the proposed amendments without any difficulties.
- The inclusion of Public servants will not affect the budget of the State since the UIF will pay benefits and Government reimburse the actual expenses paid as benefits.

6. PARLIAMENTARY PROCEDURE

6.1 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 of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 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 1(1)(a) of the Traditional Leadership and Government Framework Act, 2003 (Act. No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.