

South Africa

Disaster Management Act, 2002

COVID-19 Temporary Employee/Employer Relief Scheme (C19 TERS) Direction, 2021

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South Africa
Disaster Management Act, 2002
COVID-19 Temporary Employee/Employer Relief Scheme
(C19 TERS) Direction, 2021

Government Notice R167 of 2021

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Assented to on 26 February 2021

Commenced on 16 October 2020

[Up to date as at 3 March 2021]

[Repealed by [COVID-19 Temporary Employee/Employer Relief Scheme \(C19 TERS\) Direction, 2021 \(Government Notice R342 of 2021\)](#) on 16 October 2020]

I, Thembelani Waltermade Nxesi, the Minister of Employment and Labour, acting in terms of Regulation 4(10) of the Regulations made by the Minister of Cooperative Governance and Traditional Affairs in terms of section 27 (2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) hereby issue this Direction for the payment of benefits to qualifying employees herein stated to pay TERS benefits only to employees who are contributors to UIF, in terms of UIF Act, 2001 and from when the condition precedent payment occurs and when it occurs from date of this direction.

Mr T W Nxesi, MP

Minister of Employment and Labour

1. Definitions

In this Direction, unless the context otherwise indicates—

"**COVID-19**" means the 2019 coronavirus (SARS-COV2/COVID-19);

"**Directive**" means the Directives issued by the Minister of Employment and Labour on 25 March 2020 in GN 215 of 26 March 2020 GG 43161 as amended on 6 April 2020 and 16 April 2020 and corrected on 20 April 2020 and as amended on 26 May 2020 and as issued on 11 August 2020; and as issued 04 September 2020.

"**Regulation**" means the Regulation issued by the Minister of Cooperative Governance and Traditional Affairs under regulation gazette No 11217 vol 666 of 29 December 2020, and any other thereafter, published in terms of section 27(2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) pursuant to the declaration of a national disaster dated 15 March 2020 in terms of section 3 of that Act;

"**high-risk contact**" means contact with any person who has tested positive for Covid-19 as set out in the OHS Direction or a direction issued by the Minister of Health;

"**OHS Direction**" means the Consolidated Direction on OHS Measures (GNR 639 of 2 June 2020);

"**remuneration**" bears the same meaning as the definition of the term in the Basic Conditions of Employment Act, 1997 ([Act No. 75 of 1997](#)) read with section 35(5) of that Act and the Schedule to Government Notice 69, GG 24889 of 23 May 2003;

"**sliding scale**" means the sliding scale contained in the UI Act in accordance with which benefits are calculated in terms of the UI Act;

"**UI Act**" means the Unemployment Insurance Act, 2001 ([Act No. 63 of 2001](#))

"**vulnerable employee**" means an employee—

- (a) with known or disclosed health issues or comorbidities or any other condition that may place the employee at the higher risk of complications or death than other employees if infected with COVID-19; or
- (b) above the age of 60 years (or otherwise stipulated in any amended OHS Direction or National Disaster Regulation) who is at a higher risk of complications or death if infected.

"**Other list**" means list of sectors in addition to what is in "Annexure A" as the Minister may prescribe in terms of the Directive from time to time.

2. Incorporation of Directive for certain categories of employer and employee

- 2.1 Notwithstanding the withdrawal of the Directive with effect from 15 October 2020, in terms of the withdrawal notice of 27 November 2020, GG 43943, the provisions of the Directive of 4 September 2020 are incorporated in this Direction—
 - 2.1.1 subject to sub-paragraphs 2.3 and 2.4; and
 - 2.1.2 only in respect of the employers and employees contemplated in sub-paragraph 2.3, and only if such employees are contributors for purposes of the UI Act and their employers have declared and paid for them with the Fund.
- 2.2 The benefit shall be de-linked from the UIF's normal benefits and provisions thereto.
- 2.3 The employees contemplated in sub-paragraph 2.1.2 are those employees whose employers—
 - 2.3.1 are not permitted to commence operations, either partially or in full, in terms of the Regulations published by the Minister of Cooperative Governance and Traditional Affairs in December 2020, and any other thereafter, in terms of section 27(2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) pursuant to the declaration of a national disaster dated 15 March 2020 in terms of section 3 of that Act, and who operate in a sector specified in Annexure A;
 - 2.3.2 are unable to make alternative arrangements for vulnerable employees to work from home or take other measures as contemplated in clause 20.3 of the OHS Direction, irrespective of whether the employer operates in a sector specified in Annexure A or not;
 - 2.2.3 are unable to make use of their services either fully or partially because of operational requirements based on the economic, technological, structural or similar needs of the employer caused by compliance with the Regulations made in terms of section 27 (2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) or directions made under regulation 4(10) of those Regulations in particular the need to limit the number of employees at the workplace through rostering, staggering of working hours, short time, and the introduction of shift system
 - 2.3.3 are required to ensure that they remain in isolation or in quarantine in terms of the OHS Direction or a direction issued by the Minister of Health following a high risk-contact, irrespective of whether the employer operates in a sector specified in Annexure A or not. Employees in 2.3.3 need not first exhaust their sick leave before claiming benefit in this direction
- 2.4 Clause 3.5, 3.6 and 5.3 in the Directive are replaced with the following clauses:
 - "3.5 Subject to clauses 3.6 and 5.3, a qualifying employee will receive a benefit calculated in terms of section 13 (1) of the Act.
 - 3.6 Subject to clause 5.3, should the benefit calculated in terms of clause 3.5 together with any remuneration earned fall below R3 500, the benefit will be increased to ensure that the employee, in total of both, receives R3 500.
 - 5.3 The employer, provided that is disclosed upfront in the benefit application, shall be entitled to supplement the amount received from the Fund; provided further that the benefit and any remuneration received by the employer for work performed by the employee in any period shall not exceed 100% of the remuneration that the employee would ordinarily have received for working during that period.

3. Reduced work time benefits

- 3.1 Subject to the availability of sufficient credits, contributors whose employers do not operate in the sectors set out in Annexure A and whose employers are unable to make use of their services either fully or partially as a result of compliance with the Regulations made in terms of section 27 (2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) or directions made under regulation 4(10) of those Regulations, shall be entitled to a reduced work time benefit in accordance with section 12(1B) of the UI Act.
- 3.2 Notwithstanding anything to the contrary in section 12(1B) of the UI Act but subject to clause 3.3, the amount of the reduced work time benefit shall not be calculated with reference to the benefit level as contemplated in section 12(1B), but by utilising the IRR and sliding scale as provided for in the UI Act.
- 3.3 The employer shall be entitled to supplement the reduced time benefit amount received from the Fund; provided that the reduced time benefit amount, as calculated in terms of clause 3.2 as well as any remuneration received by the employer for work performed by the contributor in any period shall not exceed 100% of the remuneration that the contributor would ordinarily have received for working during that period, provided that such supplement amount is disclosed upfront in the benefit application.

4. Application for benefits

- 4.1 An employer or employee contemplated in clause 2 and of this Directive may apply for the benefits contained in this Direction as provided under clause 5 of the Directive and in terms of any additional procedural prescripts that may be required by the UIF.
- 4.2 In order to prove that it is unable to make alternative arrangements for vulnerable employees to work from home or take the other measures contemplated in clause 20.3 of the OHS Direction, an employer that employs -
 - 4.2.1 fifty or more employees, must provide a report from a certified occupational health and safety officer that the employees are not able to be reasonably accommodated setting out the reasons in full;
 - 4.2.2 less than 50 employees, must, in the absence of a report contemplated in paragraph 3.3.1, provide an affidavit deposed to by the owner or senior manager setting out the reasons in full as to why the employees are not able to be reasonably accommodated.
- 4.3 In order to prove that an employee in quarantine or isolation are entitled to the benefit, the employer and the employee must each submit an affidavit attested to, in the case of the employer, by the owner or senior manager, and in the case of the employee, the employee, stating that the employee had a high-risk contact and attaching such supporting documents as may be prescribed by the Fund.

5. Commencement and duration

This Direction, despite the date of publication by notice in the *Gazette*, is deemed to commence on 16 October 2020 and remains in operation until 15 March 2021.

Annexure A

1. Cinemas
2. Theatres
3. Casinos
4. Museums, galleries, libraries and archives
5. Gyms and fitness centres
6. Restaurants

7. Venues hosting auctions
8. Venues hosting professional sports
9. Night clubs
10. Swimming pools
11. Bars, taverns and shebeens
12. Public parks
13. Domestic and international air travel
14. Rail, bus services and taxi services
15. E-hailing services
16. Sale, dispensing and distributions and transportation of liquor
17. Beaches, dams, rivers and lake
18. Passengers ships
19. Venues where social events are held
20. Venues hosting concerts and live performance
21. Hotels, lodges, bed and breakfast, time share facilities, resorts and guest houses
22. Conferencing, dining, entertainment and bar facilities
23. International sports, arts and cultural events
24. Any industries that form part of the value chain of the above as per the discretion of the UIF.