

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. 39273 of 8 October 2015)
(The English text is the official text of the Bill)*

(MINISTER OF LABOUR)

[B 25—2015]

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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 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:—

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

1. The following section is hereby substituted for section 3 of the Unemployment Insurance Act, 2001 (hereinafter referred to as the principal Act): 5

“Application of this Act

3. (1) This Act applies to all employers and employees, other than employees employed for less than 24 hours a month with a particular employer, and their employers.

(2) This Act does not apply to members of parliament, cabinet ministers, deputy ministers, members of provincial executive councils, members of provincial legislatures and municipal councillors.” 10

Amendment of section 5 of Act 63 of 2001

2. Section 5 of the principal Act is hereby amended by the addition of the following paragraph: 15

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

Amendment of section 7 of Act 63 of 2001

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

“(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]** 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 11 of Act 63 of 2001

4. Section 11 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The Minister may, where necessary, designate the Commissioner or any other appropriate officer or functionary of the Fund or the Department to perform the functions of the accounting authority, on such conditions as the Minister may determine.”.

Amendment of section 12 of Act 63 of 2001

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

(a) by the insertion 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

(b) 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); and
- (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

6. Section 13 of the principal Act is hereby amended—

(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]**.

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

(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.

(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) If an application for benefits is made within the four year cycle of a previous claim, 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 5

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

Amendment of section 17 of Act 63 of 2001

8. Section 17 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 10

“(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-month] 12-month time limit has expired on just cause shown.”.

Amendment of section 20 of Act 63 of 2001

9. Section 20 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 15

“(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

10. Section 24 of the principal Act is hereby amended— 20

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

(b) by the addition of the following subsections: 25

“(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.

(7) Subsection (5) does not apply to a contributor who voluntarily terminated her pregnancy.”. 30

Amendment of section 25 of Act 63 of 2001

11. Section 25 of the principal Act is hereby amended—

(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] at any time before or after childbirth: Provided that the application shall be made within a period of 12 months after the date of childbirth.”; and 35

(b) by the deletion of subsection (2).

Amendment of section 30 of Act 63 of 2001 40

12. 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-month] 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.”; 50
and

(c) by the insertion after subsection (2) of the following subsection:

“(2A) (a) Any nominated beneficiary of the deceased contributor may claim dependant’s benefits subject to paragraph (b).

(b) A nominated beneficiary will qualify for benefits if there is no surviving spouse, life partner or dependant children of the deceased contributor.”. 5

Amendment of section 33 of Act 63 of 2001

13. 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 charge any fee against the applicant.”. 10

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

14. Section 36A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(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 sections 38, 39, 40 and 41 of Act 63 of 2001

15. Sections 38, 39, 40 and 41 of the principal Act are hereby repealed. 20

Amendment of section 50 of Act 63 of 2001

16. 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 25

17. Section 56 of the principal Act is hereby amended—

(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 30

(b) by the insertion after subsection (3) of the following subsection:

(3A) The Minister will issue regulations on a special dispensation applicable to domestic employers and small businesses or enterprises regarding the submission of information in subsection (3).” 35

Amendment of Schedule 2 to Act 63 of 2001

18. 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 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 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.”. 40 45

Short title

19. This Act is called the Unemployment Insurance Amendment Act, 2015.

MEMORANDUM ON THE OBJECTS OF THE UNEMPLOYMENT INSURANCE AMENDMENT BILL, 2015

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 (the Fund) 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 Board (the Board) recommended 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 the Income Replacement Rate (IRR) and also amend the constitution of the Board, so as to provide for the functions of the regional appeals committee.

3. OVERVIEW OF BILL

Clause 1

3.1 Clause 1 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

3.2 Clause 2 seeks to amend section 5 of the Act so as to make provision for the refinancing of unemployment insurance beneficiaries to facilitate re-entry into the labour market.

Clause 3

3.3 Clause 3 seeks to amend section 7(1) of the Act which deals with the investment of money of the Fund. The Bill also seeks to provide for the money of the 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 Clause 4 seeks to amend section 11 of the Act by providing for the designation of the Commissioner or any appropriate employee or functionary of the Fund or Department of Labour (the Department), to perform the functions of the accounting authority, on such conditions as the Minister may determine, should a need arise.

Clause 5

3.5 Clause 5 seeks to amend section 12 of the Act by providing for the payment of benefits to contributors who lose part of their income due to reduced working times, and to provide for a fixed rate of payment of maternity benefits.

Clause 6

- 3.6 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. It has been found that the maximum of 238 days is not in line with Schedule 2 of the Act. In order to address this anomaly, section 13 of the Act is amended to provide for 365 days instead of 238 days.
- 3.7 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 or not they claimed within that four year cycle.

Clause 7

- 3.8 Clause 7 seeks to repeal section 14 (a) of the Act.

Clause 8

- 3.9 Clause 8 seeks to amend section 17 of the Act in order to increase the period of submitting applications 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 12 months.

Clause 9

- 3.10 Clause 9 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 seven days.

Clause 10

- 3.11 Clause 10 seeks to amend section 24 of the Act so as to provide for a period when a contributor is entitled to maternity benefits in case of miscarriage.

Clause 11

- 3.12 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. Clause 11 seeks to amend section 25(1) of the Act by substituting the period of eight weeks upon which the application for maternity benefits may be made for a maximum period of up to 12 months after child birth.

Clause 12

- 3.13 Clause 12 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. Section 30 is further amended by the insertion of a new provision allowing contributors to nominate their beneficiaries in cases of death benefits.

Clause 13

- 3.14 Clause 13 seeks to amend section 33 of the Act by prohibiting any agency or person purporting to be acting on behalf of the applicant to charge any fee against the applicant.

Clause 14

- 3.15 The amendment seeks to empower the Board to appoint regional appeals committees for each region determined by the Minister.

Clause 15

3.16 Clause 15 seeks to repeal sections 38, 39, 40 and 41 of the Act.

Clause 16

3.17 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 Board to stipulate functions of the regional appeals committee.

Clause 17

3.18 Clause 17 amends section 56 of the Act in order to provide for a new provision empowering the Minister to issue regulation on a special dispensation applicable to domestic employers and small businesses or enterprises regarding the submission of information in terms of that section.

Clause 18

3.19 Clause 18 seeks to amend Schedule 2 to the Act so as to empower the Minister to vary the Income Replacement Rate and the benefit period through regulations.

Clause 19

3.20 Clause 19 provides for the short title of the Bill.

4. CONSULTATION

The following bodies were consulted:

- The Board, which is constituted by appointees of NEDLAC.
- Interdepartmental Task Team on Social Security and Retirement Reforms. The Task Team consists of : National Treasury, Department of Public Service and Administration, South African Revenue Services, Department of Social Development, Department of Labour, Department of Transport, Road Accident Fund, Department of Health and South African Social Security Agency.
- National Treasury was also consulted separately.
- The Bill was tabled and discussed with social partners at NEDLAC and a report was issued.

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 will 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 18(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.