



DIE VERANDERING IN ONDERWYS
THE CHANGE IN EDUCATION

REGSDIENSTE | LEGAL SERVICES



t: 012 436 0900 / e: regsdienste@saou.co.za / w: www.saou.co.za

Regsdienste Nuusbrief | Legal Services Newsletter

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OPTREDE WAT VEREIS WORD DEUR DIE WERKGEWER VAN SKOOLBEHEERLIGGAAM (BL) AANSTELLINGS

1. Daar is 'n grendelstaat verklaar in terme van die Wet op Rampbestuur 2002, en die tydperk van inperking is verleng na die einde van April 2020.
2. Die SAOU kry al hoe meer navrae van opvoeders wat in diens is van BL'e, en in 'n mindere mate vanaf persone wat werk vir privaatskole.
3. Dit wil voorkom dat heelwat BL'e nie beseft dat hul "privaat werkgewers" is wat hierdie deel van die opvoeders-korps aanbetref nie, en dat hul ten opsigte van hierdie werknemers dieselfde verpligtinge het as 'n werkgewer in die privaatsektor nie.
4. Dit is duidelik dat sommige BL'e eenvoudig aanvaar dat die Skoolhoof hierdie verpligtinge outomaties sal uitvoer.
5. 'n Opvoeder in diens van 'n BL loop die risiko dat BL'e teen die einde van April 2020 slegs in staat sal wees om hul gedeeltelik of dalk glad nie salaris te betaal.
6. Die rede daarvoor, en sekere BL'e mag dit

REMEDIES AVAILABLE TO EDUCATORS EMPLOYED BY A SCHOOL GOVERNING BODY (SGB) OR AN INDEPENDENT SCHOOL

1. The President announced a "lockdown" and an extension of the lockdown, extending to 30 April 2020, in reply to the Covid-19 crisis.
2. The SAOU has received an increasing number of enquiries from educators employed by SGB's and to a lesser extent from those employed by Independent Schools.
3. It is clear that SGB's have little understanding that they are "private employers" in this context of the employment of "additional" educators, and that they need to implement plans, on behalf of such employees, in the same manner as other employers in the private sector.
4. More so insofar as SGB's may simply accept that this is something the School Principal will automatically do.
5. Employees employed by a SGB may be in the unfortunate position that they run the risk of not being paid in full by the SGB at the end of April 2020 as a result of a lack of funds.
6. The lack of funds is the result of the fact that

dalk eers ter elfder ure agterkom, is die waarskynlikheid dat hul skoolfonds-inkomste drasties gaan verminder, aangesien heelwat ouers ook slegs ten dele, of glad nie, salaris gaan ontvang nie.

7. Daar is 'n kommerwekkende tendens op sosiale media waar ouers aandui dat hul nie skoolfonds gaan betaal nie, aangesien die skool gesluit is en geen onderrig gegee word nie. Die benadering laat buite rekening dat begrotings vir die betaling van BL aanstellings jaarliks gedoen word en eenvoudig werk op 'n maandelikse gemiddeld. Hierdie tipe begroting bevat dikwels geen reserwe vir onvoorsiene en nood-uitgawes nie.
8. Die Departement van Arbeid het op 8 April 2020 'n skema die lig laat sien bekend as die " Temporary Employer / Employee Relief Scheme " of TERS .
9. Opvoeders wat werknemers van BL'e is moet dringend met hul Skoolhoofde kontak maak en vasstel wat die BL se beplanning met betrekking tot betaling van hul salarisse vir ten minste die volgende 3 maande is.
10. As daar enige twyfel is, word aanbeveel dat opvoeders aandring dat die BL as werkgever vir die TERS voordele by die Departement van Arbeid registreer.
11. Registrasie vind plaas deurdat die werkgever 'n epos stuur aan covid19ters@labour.gov.za. Die versending genereer 'n outomatiese reaksie waarin verdere optrede uiteengesit word. U kan nie as individu aansoek doen nie. Slegs die WERKGEWER kan aansoek doen.
12. Die finale TERS regulasies is te vinde op die SAOU se webblad.
13. As u werkgever onredelikerwys weier om te registreer, beveel ons aan u kontak die SAOU by regsdiens@saou.co.za

the schools are not getting fee income (because parents in these trying times, are not being paid by their employers for the same reason) – and some SGB's or schools may only appreciate this dilemma at a very late hour.

7. There is a disturbing thread of discussion amongst parents – that they need not pay as there is no schooling going on – forgetting that the budgets of schools are very much "averaged" over a year with very little reserves included for an unforeseen emergency.
8. The Department of Labour has in the past days published a scheme called - Temporary Employer / Employee Relief Scheme – TERS.
9. SGB appointees should urgently contact their Principal and ascertain if there are enough reserves in the school-fund to pay them during the next 3 months.
10. If there is any doubt, the SGB appointees should insist that the SGB as private employer register for the TERS benefit with the Department of Employment and Labour.
11. This is done by the employer sending an e-mail to covid19ters@labour.gov.za
This generates an auto-reply that gives guidance and stipulates the requisite documents to be furnished by the employer. You cannot apply by yourself – it has to be done by the EMPLOYER.
12. A link to the final TERS Regulations could be found on the SAOU webpage.
13. If your employer neglect or refuse, contact the Legal Services of the SAOU at regsdiens@saou.co.za

[with a slight edit and thankful acknowledgement to "www.neasa.co.za"]

MUST A BUSINESS BE IN COMPLETE SHUTDOWN IN ORDER TO CLAIM?

No, the final document published makes provision for a partial closure or alternatively a reduction of an employee's income due to the COVID-19 lockdown.

CAN YOU APPLY FOR TEMPORARY WORKERS LAID-OFF BENEFIT DURING LOCKDOWN?

Yes, as long as the reason for them not working is as a result of the lockdown.

CAN NON-SOUTH AFRICAN CITIZENS RECEIVE UIF BENEFITS?

Yes, provided that they have a work permit and are registered with the UIF.

[Click here for circular no 4 of 2020](#)

ARE BENEFITS ONLY AVAILABLE TO EMPLOYEES RECEIVING NO PAYMENT?

No, employees whose income is reduced may also claim.

CAN EMPLOYERS ASK EMPLOYEES TO TAKE ANNUAL LEAVE?

Yes, employees who have annual leave available may be requested to utilise their leave during this period, however, if there is an existing leave agreement in the workplace, the agreement will have to be amended, which would require their consent.

IS THERE A BENEFITS CALCULATION GUIDELINE?

Yes, at this stage the benefit will be calculated on a sliding scale between 38% (for high earners) and 60% (for lower earners), calculated on the maximum salary cap of R17 712.00 per employee, per month.

ARE THE BENEFITS TAXABLE?

No, the full amount received by the employer from the UIF must be paid to the employee.

WHO CAN MAKE AN APPLICATION ON BEHALF OF THE COMPANY?

Any person who has been authorised to do so in writing by the CEO and CFO or equivalent functionaries.

WHEN WILL PAYMENTS BE MADE?

The communication from the Department of Employment and Labour indicates that payments will only be made after the lockdown period.

SHOULD AN EMPLOYER OPEN A SEPARATE BANK ACCOUNT?

The employer does not need to open a separate bank account but can use his normal payroll or business account.

SHOULD EMPLOYERS WITH 10 OR LESS EMPLOYEES SIGN A MOA?

According to the latest auto response from Department of Employment and Labour employers with 10 or less employees do not sign the MOA as the UIF will pay the employees directly. However, employers with 10 or less employees are advised to follow the instructions received on their particular auto response as this requirement is constantly changing.

WHAT IF AN EMPLOYER HAS ADVANCED PAYMENT TO EMPLOYEES?

Employers who have paid or advanced payment to employees, may claim to recoup the payments against the funds received from the UIF. This advance should be indicated separately as “TERS-benefit” on the payslip and should not be taxed.

WHICH EMPLOYEES CAN BE CLAIMED FOR?

Any employee who was in employment on 27 March 2020 and who has suffered financial prejudice as a result of the lockdown. It is advised that new employees who were supposed to start work, during lockdown, should be included in the claim and an explanation may be required that such employees were already contracted to commence employment, prior to the lockdown being implemented.

WHAT IS INCLUDED IN REMUNERATION FOR PURPOSES OF TERS?

The amount an employee would normally earn and pay UIF on.

WHAT IF EMPLOYEES HAVE TAKEN LEAVE AND THEIR EMPLOYER WANTS TO CLAIM FROM TERS?

The employer should not declare the value of leave on the TERS application as ‘payment made’. Once benefit has been received from UIF, it should be paid over to employees and leave credits equal to the value of the funds received should be applied. Employees can be given the option if they want to top-up the benefit to their normal salary by utilising leave.

SHOULD EMPLOYERS WHO HAVE ALREADY SUBMITTED, RESUBMIT?

No, if UIF requires different or additional documents or information, they will inform the employer accordingly.

WHAT IF EMPLOYEES DO NOT HAVE BANK ACCOUNTS?

Employers should leave this information blank and deal with it as and when a query arises. Proof of payment should still be provided if payment to an employee is made in cash.

CAN INDIVIDUALS CLAIM TERS BENEFITS?

No, if an employer did not claim, the employee should approach the employer to claim. If such an employer still does not claim, the employees can claim normal UIF benefits for short-time or unemployment.



01 2 023 1333

SAOU DIENSSENTRUM
SAOU SERVICE CENTRE

saou@saou.co.za