

ngoLAW in Brief – The following material has been compiled by ngoLAW for the purpose of assisting organizations currently navigating the COVID-19 Crisis and has been made available to the partnership initiative between CITY STORY and FAITH AT WORK.

Topic: Understanding TERS and its relationship with UIF.

Many organisations, facing significant drops in funding and other income, as well as the inability to carry out many of their projects, are considering temporary or even permanent shutting of operations, and looking for advice on how to support employees at this time. There is much discussion (and confusion) around the new TERS (Covid-19 Temporary Employer/Employee Relief Scheme)) scheme offered in the Directive issued under the Disaster Management Act on 25 March 2020. Some of the confusion was sown by an inaccurate initial guide issued, and some of it is contained in the Directive itself.

In this ngoLAW Brief we:

- **Examine the TERS offering, explain how it works and when it is applicable, and deal with the misconceptions; and**
- **Compare the TERS option to the more final option of retrenching and allowing ex-employees to claim UIF.**

We don't deal with the mechanics of the application and the forms, as there is plenty of useful information already in circulation on these aspects.

Please note that this advice is our current interpretation (6 April) of a Directive which was speedily drafted, and which has not yet been tested (people know how to make the TERS applications, but we have not yet spoken to anyone whose claims have been paid). If anyone has any practical experience which sheds further light, please let us know. We will be sending out updates as the situation unfolds. We apologise for the length of this- it is not "Brief" but we have many clients wanting this guidance urgently.

In the emails to follow this one, we will

- **Analyse the other options available to organisations (leave, reducing working days, advance payments etc);**
- **Answer further questions on the TERS option and other questions you send us; and**
- **Discuss those who work for the organisation, but who are not formal employees: consultants, short-term contractors- 'piece' workers. Neither the TERS nor the UIF benefits will be available to these workers.**

WHAT IS TERS?

TERS is a temporary UIF-based scheme which provides funding for payment to employees during a temporary closure of operations of the organisation. TERS is intended to allow organisations to survive a break in operations of up to three months without retrenching its employees.

WHEN IS TERS IS AVAILABLE?

- To organisations which are registered for UIF
- For employees who are registered with UIF; and
- For the duration of a closure due to COVID-19, up to a maximum of three months.

IMPORTANT DIFFERENCES BETWEEN TERS AND UIF FOR UNEMPLOYMENT

(this table does not deal with short-payment UIF, which will be dealt with in the next Brief)

TERS	UIF for unemployment
TERS does not require the termination of employment	UIF for the unemployed requires that employment is terminated
For the TERS calculation, it does not matter how long the employee has been registered for UIF. AS long as the employee is registered for UIF, the benefit will be calculated as though they had been a member for 8 months	If the length of employment is less than 8 months, the number of months employed has a dramatic difference on the amount paid out
The TERS benefit is for a MINIMUM of the applicable minimum wage in the sector (which may be R3500 but differs in sectors- see the table below) . In the TERS system the lowest paid workers will be guaranteed minimum wage for the period of closure	When you calculate normal UIF, the amount payable can often come out below the minimum wage
TERS is paid for a maximum of three months or the period of closure, whichever is shorter	UIF is payable for a maximum of 8.7 months, depending on length of employment

TERS is available for a limited time and only if there is temporary cessation of work due to COVID-19

UIF is available if employees lose their jobs, either through retrenchment or the organisation closing

The employer (not the employee) submits the claim to the UIF

The ex-employee submits the claim for UIF. (However, current "COVID" UIF forms seem to allow employers to lodge the claims on behalf of soon-to-be ex-employees)

TERS is paid to the employer and then the employer makes the payment to the employee each month

Payments are made directly to ex-employees each month until the benefit ceases

The TERS processing and payments are being prioritised, which should translate to faster registration and pay-outs than regular UIF. (However, we anticipate that the system may be overloaded due to high demand)

UIF payments will probably be dealt with after the TERS payments

HOW DO WE CALCULATE THE TERS BENEFIT?

The benefit will be calculated in terms of the UIF INCOME REPLACEMENT RATE SLIDING SCALE of 38 % (for high earners) up to 60 % (for low earners) as provided in the Unemployment Insurance Act 63 of 2001 (UI ACT). The maximum benefit for a high earner would be 38 % of R17 712 a month, which amounts to about R6 730 a month. For the **duration of the shutdown or a maximum period of three months**, the benefit will not be less than the minimum wage applicable for the relevant sector.

To allow you to compare the options and see the resulting payments, we have taken examples of levels of monthly salary and then showed you the amount which would be paid. (The benefits here stated are taken from the examples in the Third Schedule to the UI Act, and with the help of the calculator at <http://ezuif.co.za/uif-calculator/>). The numbers are intended to be illustrative only. We have presumed in this table that the national minimum wage is applicable and, remember, the period of employment is not relevant:

Example:

Salary per month	Percentage applicable	Usual termination UIF benefit	BUT TERS amount paid
R5 000	41.31	R 2 065.49	R 3 500 (for 3-month period)
R10 000	30.78	R 3 077.60	R 3 500 (for 3-month period)
R 20 000	38% of R17 712 (Max cap)	R 4 412.33	R 6 730 (for 3-month period)

TERS MYTHS (and truths)

MYTH

TRUTH

You can be paid up to R17 712 per month

R17 712 is the maximum base amount to be used to calculate the payout. The maximum amount to be paid is about R6730 per employee per month

You can only be paid a maximum of R3500 per month

The maximum is as per the UIF calculation, (with the base of calculation capped at R17 712), the minimum is the minimum wage (usually R3500 per month)

The payments are available only for the lockdown period

The payments are available for a maximum of three months during the period of closure of the organisation due to COVID-19

INITIAL TERS QUESTIONS

Complete closure required?

The Directive issued seems to contemplate and assume that there is a complete closure of the organisation, in order for the TERS benefit to be applied for, and many commentators have agreed with this. However it is unlikely that all of the staff of any organisation will be unable to do any work during a temporary cessation of activities and, certainly, if the intention of TERS is to assist organisations so that they do not close down for good or retrench staff, then we believe that it must be accepted that certain levels of organisational operations must continue.

For instance, if the TERS payments are to be processed and made to the employees during temporary closure, then the finance and admin team will have to be working. And, if the organisation is to survive this crisis, then marketing and fundraising should be harder at work than ever. It also may be that there are certain projects or divisions which cannot continue, and then some which can. If an organisation is, for instance, involved in one project which is about delivering essential services, then that project can continue but others which are not essential (and the workers who are not essential to the essential services) will not be working. Our feeling is that, if the TERS support is required for employees who are not able to work due to COVID-19, then the organisation should make the application to register for TERS for those employees. Although the Directive does not seem to contemplate the realities we have outlined, we feel that our interpretation is in the spirit of what is intended.

Can we claim TERS and the short-payment UIF benefit at the same time?

Because TERS is for temporary closure and short payment UIF benefit is for carrying on work but for fewer hours/days, the applications and the system is not designed to accept applications for both sorts of applications from one employer. Although a technical argument could be made that different employees could be treated differently (if our position on the total closure aspect holds up) we very much doubt that an application for both TERS and short-payment UIF support from the same employer will be accepted and processed.

Can we claim TERS and top it up with what we can, to support employees?

This is not possible- the Directive specifically states that “an employee who is being paid by the employer during this period is not entitled to [the TERS] benefit.”

Can we first do TERS and then, if needed, retrench and let employees claim usual unemployment UIF?

If, at the end of the three months (or closure) period, it is clear that there are no funds to continue at all (or for a longer period) then there is no reason, at that stage, not to transition to retrenchment and the claiming by the ex-employees of the usual UIF. Please remember that retrenchment generally involves a severance package to be paid. If there are no funds for this and/or if the intention is to retrench with the idea of rehiring once projects can continue and there are funds available, then you will need to negotiate with the employees that no (or a

smaller) package is payable on termination, in the hope that it is possible to rehire later.

Summary of potential benefits:

The following table sets out illustrative examples of the difference between the TERS and the UIF unemployment amounts for different salaries and terms of employment, and also the severance packages that would be standard. (The calculations of benefits have been done with reference to the Third Schedule to the UI Act, but using the calculator at <http://ezuif.co.za/uif-calculator/>).