

# UNEMPLOYMENT INSURANCE CONTRIBUTIONS ACT 4 OF 2002

[ASSENTED TO 27 MARCH 2002]

[DATE OF COMMENCEMENT: 1 APRIL 2002]

*(English text signed by the President)*

**as amended by**

Taxation Laws Amendment Act 30 of 2002

Revenue Laws Amendment Act 45 of 2003

**Regulations under this Act**

UNEMPLOYMENT INSURANCE REGULATIONS

## ACT

**To provide for the imposition and collection of contributions for the benefit of the Unemployment Insurance Fund; and to provide for matters connected therewith.**

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#### CHAPTER 1

##### INTRODUCTORY PROVISIONS (ss 1-4)

### 1 Definitions

In this Act, unless the context indicates otherwise-

**'Board'** means the Unemployment Insurance Board established in terms of section 47 of the Unemployment Insurance Act;

**'Commissioner'** means the Commissioner for the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997 (Act 34 of 1997);

**'contribution'** means the contribution determined in terms of section 6;

**'Director-General'** means the Director-General as defined in the Unemployment Insurance Act;

**'domestic worker'** means an employee who performs domestic work in the home of his or her employer, and includes a-

- (a) gardener;
- (b) person employed by a household as a driver of a motor vehicle; and
- (c) person who takes care of any person in that home,

but does not include a farm worker;

**'employee'** means any natural person who receives any remuneration or to whom any remuneration accrues in respect of services rendered or to be rendered by that person, but excludes an independent contractor;

**'employer'** means 'employer' as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, and includes a 'representative employer' as defined in that Schedule;

**'financial year'** means the period commencing on the first day of March in any year and ending on the last day of February in the following year;

**'Income Tax Act'** means the Income Tax Act, 1962 (Act 58 of 1962);

**'labour inspector'** means a labour inspector as defined in the Unemployment Insurance Act;

**'Minister'** means the Minister of Finance;

**'regulation'** means a regulation made under section 18;

**'remuneration'** means 'remuneration' as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, but does not include any amount paid or payable to an employee-

- (a) by way of any pension, superannuation allowance or retiring allowance;
- (b) which constitutes an amount contemplated in paragraphs (a), (cA), (d), (e) or (eA) of the definition of 'gross income' in section 1 of the Income Tax Act; or
- (c) by way of commission;

**'seasonal worker'** .....

[Definition of 'seasonal worker' deleted by s. 207 (1) of Act 45 of 2003.]

**'this Act'** includes the regulations;

**'Unemployment Insurance Act'** means the Unemployment Insurance Act, 2001;

**'Unemployment Insurance Commissioner'** means the Commissioner designated by the Minister of Labour in terms of section 43 of the Unemployment Insurance Act;

**'Unemployment Insurance Fund'** means the Fund established by section 4 of the Unemployment Insurance Act.

## **2 Purpose of Act**

The purpose of this Act is to provide for-

- (a) the payment of contributions for the benefit of the Unemployment Insurance Fund; and
- (b) procedures for the collection of such contributions.

## **3 Administration of Act**

(1) This Act must be administered by the Commissioner.

(2) The Commissioner may delegate any power or assign any duty which relates to the collection of-

- (a) contributions payable to the Unemployment Insurance Commissioner in terms of section 9; and
  - (b) any information to be submitted by employers in terms of this Act,
- to the Unemployment Insurance Commissioner.

#### **4 Application of Act**

- (1) This Act applies to all employers and employees, other than-
- (a) an employee and his or her employer, where such employee is employed by that employer for less than 24 hours a month;
  - (b) employees under a contract of employment contemplated in section 18 (2) of the Skills Development Act, 1998 (Act 97 of 1998), and their employers;  
[Para. (b) substituted by s. 208 (1) (a) of Act 45 of 2003.]
  - (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 103 of 1994), and their employers; and  
[Para. (c) substituted by s. 208 (1) (a) of Act 45 of 2003.]
  - (d) an employee and his or her employer, where that employee has entered the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within the Republic if upon the termination thereof the employer is required by law or by the contract of service, apprenticeship or learnership, as the case may be, or by any other agreement or undertaking, to repatriate that person, or if that person is so required to leave the Republic.
- (2) .....
- [Sub-s. (2) deleted by s. 208 (1) (b) of Act 45 of 2003.]

### **CHAPTER 2**

#### **DUTY TO CONTRIBUTE AND RECOVERY OF CONTRIBUTIONS (ss 5-15)**

##### **5 Duty to contribute to Fund**

- (1) Every employer and every employee to whom this Act applies must, on a monthly basis, contribute to the Unemployment Insurance Fund.
- (2) The contributions must be paid by the employer either to the Commissioner in terms of section 8 or to the Unemployment Insurance Commissioner in terms of section 9, whichever is applicable to the particular employer.

##### **6 Determination of contribution**

- (1) Subject to subsection (2), the amount of the contribution payable in terms of section 5-
- (a) by an employee, must be one per cent of the remuneration paid or payable to that employee by his or her employer during any month; and
  - (b) by an employer in respect of any one of its employees, must be equal to one per cent of the remuneration paid or payable by that employer to that employee during any month.

(2) Subsection (1) does not apply to so much of the remuneration paid or payable by an employer to an employee during any month as exceeds an amount <sup>1</sup>\* determined from time to time by the Minister of Finance by notice in the *Gazette*, after consultation with the Minister of Labour and the Unemployment Insurance Commissioner.

##### **7 Employer must deduct employee's contribution**

(1) Subject to subsection (2), an employer must, on a monthly basis, deduct or withhold the amount of the employee's contribution contemplated in section 6 (1) (a) from the remuneration paid or payable to that employee during that month.

(2) Where the remuneration of the employee is paid at intervals other than on a monthly basis, the employer must deduct the amount of the employee's contributions on such other basis as coincides with the intervals of payment of remuneration by the employer to the employee.

(3) When making a deduction in terms of subsection (1) or (2), an employer may not-

- (a) deduct amounts that are in excess of the amount of the contribution due by the employee;
- (b) seek or receive a fee from the employee for complying with this Act; or
- (c) deduct arrear contributions from the employee after the end of the financial year during which it was payable.

(4) Subject to subsection (3) (c), where the employer fails to deduct the contribution as contemplated in subsection (1) or (2), the employer is liable for such contributions.

(4A) Where an amount of an employee's contribution which has been deducted or withheld by an employer which is a company (other than a listed company) in terms of this section has not been paid over to the Commissioner or the Unemployment Insurance Commissioner, as the case may be, the representative employer and every director and shareholder of that company who controls or is regularly involved in the management of the company's overall financial affairs shall be personally liable for the payment of that amount to the Commissioner or the Unemployment Insurance Commissioner and for any penalty contemplated in section 13 (2) which may be imposed in respect of that payment.

[Sub-s. (4A) inserted by s. 209 (1) of Act 45 of 2003.]

(5) If any payment made by the employer to the Commissioner or the Unemployment Insurance Commissioner in terms of section 8 or 9, as the case may be, includes an amount which was deducted or withheld in terms of subsection (1) or (2), and it subsequently becomes known to the employer that the payment made by the employer was not due or payable in terms of this Act, or was in excess of the amount due or payable, the employer must refund to the employee such amount or excess amount, as the case may be, as has been deducted or withheld and overpaid by the employer, despite the amount not having been refunded to the employer by the Commissioner or the Unemployment Insurance Commissioner, as the case may be.

## **8 Payment of contribution to Commissioner and refund**

(1) Every employer, other than an employer contemplated in section 9 (1), must on a monthly basis pay the amount of all employees' contributions and the employer's contributions in respect of every employee in the employment of that employer to the Commissioner not later than seven days, or such longer period as the Commissioner may determine, after the end of the month in respect of which the contributions are payable.

(2) An employer must, together with the payment contemplated in subsection (1), submit a statement in such form as the Commissioner may require and reflecting the amount of the payment and such other particulars as the Minister may prescribe by regulation.

(3) If the amount of any contribution, interest or penalty paid by an employer to

the Commissioner was not due or payable, or is in excess of the amount due or payable in terms of this Act, that amount, or such excess amount, becomes refundable to that employer by the Commissioner.

[Sub-s. (3) substituted by s. 81 of Act 30 of 2002.]

(4) The Commissioner must notify the Director-General, within such period as may be agreed upon between the Commissioner and the Director-General, of the amount of the contributions, interest and penalties collected from, and refunds made to, employers during the previous month and provide such further particulars as may be agreed upon by the Commissioner and the Director-General.

## **9 Payment of contribution to Unemployment Insurance Commissioner and refund**

- (1) (a) For the purpose of this section, 'employer' means an employer who-
- (i) is not required to register as an employer in terms of paragraph 15 of the Fourth Schedule to the Income Tax Act;
  - (ii) has not registered voluntarily as an employer in terms of the Fourth Schedule to the Income Tax Act; or
  - (iii) is not liable for the payment of the skills development levy in terms of the Skills Development Levies Act, 1999 (Act 9 of 1999).

(b) Subject to subsection (5), an employer must, on a monthly basis and in respect of every employee in the employment of that employer, pay to the Unemployment Insurance Commissioner not later than seven days, or such longer period as the Unemployment Insurance Commissioner may determine, after the end of the month in respect of which contributions are payable the amount of-

- (i) the employee's contribution which must be withheld from the remuneration of the employee during that month, as contemplated in section 7 (1) or (2); and
- (ii) the employer's contribution as contemplated in section 6 (1) (b).

(2) An employer must, together with the payment contemplated in subsection (1), submit a statement in such form as the Unemployment Insurance Commissioner may require and reflecting the amount of the payment and such other particulars as the Minister may prescribe by regulation.

(3) The Unemployment Insurance Commissioner must pay all contributions, interest and penalties collected into the Unemployment Insurance Fund.

(4) If the amount of any contribution, interest or penalty paid by an employer to the Unemployment Insurance Commissioner was not due or payable, or was in excess of the amount due or payable in terms of this Act, that amount or such excess amount must be refunded to that employer by the Unemployment Insurance Commissioner from the Unemployment Insurance Fund.

(5) (a) Where an employer on reasonable grounds believes that the total amount payable in terms of section 6 (1) (a) and (b) in respect of all its employees during any financial year will not exceed such amount as the Unemployment Insurance Commissioner may from time to time determine by notice in the *Gazette*, the employer may elect to make payment of the full amount of the total contributions in respect of that financial year in a single payment within 7 days after the beginning of that financial year.

(b) If an employer discovers that the amount of the payment contemplated in paragraph (a) is less than the amount payable in respect of all its employees in terms of

section 6 (1) (a) or (b), that employer must as soon as possible but before the end of the financial year in question pay the outstanding amount to the Unemployment Insurance Commissioner.

#### **10 Duty to register as employer and duty to provide particulars**

(1) An employer to whom this Act applies must apply for registration to the Commissioner or the Unemployment Insurance Commissioner, whichever is applicable to such employer in terms of section 8 or 9, in such manner and within such period as may be prescribed by the Commissioner or Unemployment Insurance Commissioner, respectively.

(2) The employer must, together with the registration contemplated in subsection (1) provide such information as the Minister may prescribe by regulation.

(3) The employer must, before the seventh day of each month, submit to the Commissioner or the Unemployment Insurance Commissioner, whichever is applicable to such employer in terms of section 8 or 9, such information relating to its employees as the Minister may prescribe by regulation, including details relating to-

- (a) the termination of the employment of any employee; and
- (b) the appointment of any employee by the employer.

(4) The Commissioner or the Unemployment Insurance Commissioner, as the case may be, may request the employer to provide within 30 days of the request, or such extended period as the Commissioner or Unemployment Insurance Commissioner may allow, such additional particulars as may reasonably be required to give effect to the purpose of this Act.

#### **11 Payment of amounts collected by Commissioner into National Revenue Fund**

(1) The contributions, interest and penalties collected by the Commissioner in terms of this Act must, after deduction of any refunds, be paid into the National Revenue Fund.

(2) The total amount of contributions, interest and penalties paid into the National Revenue Fund in terms of subsection (1) is a direct charge against the National Revenue Fund for the credit of the Unemployment Insurance Fund.

(3) The Director-General must, within 14 days after receipt of the notice from the Commissioner in terms of section 8 (4), authorise the transfer of the amount of the contributions, interest and penalties paid into the National Revenue Fund to the Unemployment Insurance Fund.

#### **12 Interest on late payments**

An employer who fails to pay the full amount of any contribution within the period for payment prescribed by this Act, must pay interest on the outstanding amount at the rate contemplated in paragraph (b) of the definition of 'prescribed rate' in section 1 of the Income Tax Act, calculated from the day following the last day for payment to the day that payment is received by the Commissioner or Unemployment Insurance Commissioner, as the case may be.

[S. 12 substituted by s. 82 of Act 30 of 2002.]

#### **13 Penalties on default**

(1) If any contribution remains unpaid after the last day for payment thereof as contemplated in section 8 (1) or 9 (1), a penalty of 10 per cent of the unpaid amount is payable in addition to the interest contemplated in section 12, but the Commissioner or the Unemployment Insurance Commissioner, as the case may be, may, having due regard

to the circumstances of the case, remit the penalty or any portion thereof.

(2) Subject to subsection (3), where an employer fails to perform any duty imposed upon the employer by this Act or does, or omits to do, anything with intent-

- (a) to evade the payment of any amount of contribution payable by that employer in respect of any employee; or
- (b) to cause a refund to that employer by the Commissioner or the Unemployment Insurance Commissioner of any amount of contribution, interest or penalty which is not refundable or is in excess of the amount properly refundable to the employer,

an additional penalty not exceeding an amount equal to double the amount of the contribution contemplated in paragraph (a), or the amount not refundable or the amount of the excess referred to in paragraph (b), as the case may be, may be imposed on the employer.

(3) The amount of the additional penalty contemplated in subsection (2)-

- (a) must be determined by the Commissioner or the Unemployment Insurance Commissioner, as the case may be, and must be paid by the employer within such period as the Commissioner or Unemployment Insurance Commissioner may determine; and
- (b) shall be deemed to be an amount of contribution payable in terms of this Act, for purposes of-
  - (i) the determination of any interest payable in terms of section 12; and
  - (ii) the application of the provisions of the Income Tax Act, 1962, in respect of the payment and recovery of any contribution, interest or penalty in terms of section 14 (1) (d).

[Sub-s. (3) substituted by s. 83 (1) of Act 30 of 2002.]

#### **14 Application of Income Tax Act**

(1) The provisions of the Income Tax Act contemplated in subsection (2) apply, with the changes required by the context, to any contribution paid or payable in terms of this Act, in respect of-

- (a) the administration of this Act as regards the exercise of powers and performance of duties and the preservation of secrecy;
- (b) statements, the production of information, documents or things, enquiries, searches and seizures and evidence on oath for purposes of obtaining full information in respect of the calculation of the contributions due and payable in terms of this Act;
- (c) any assessment, objection and appeal;
- (d) the payment, recovery or refund of any contribution, interest or penalty;
- (e) representative taxpayers and representative employers;
- (f) any transaction, operation or scheme entered into or carried out for the purposes of avoiding or postponing any liability for the contribution or of reducing the amount of the contribution;
- (g) reporting of unprofessional conduct; and
- (h) the jurisdiction of the courts.

(2) For purposes of subsection (1), the provisions of the Income Tax which apply to this Act are those relating to-

- (a) the administration thereof as contained in Chapter 1 of the Income Tax

- Act;
- (b) returns, the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
  - (c) assessments;
  - (d) objections and appeals;
  - (e) the payment and recovery of tax, interest and penalties;
  - (f) refunds;
  - (g) representative taxpayers and representative employers;
  - (h) transactions, operations or schemes for purposes of avoiding or postponing liability for taxes on income or reducing the amount of taxes on income;
  - (i) the reporting of unprofessional conduct; and
  - (j) the jurisdiction of the courts.

### **15 Labour inspectors**

The Commissioner or Unemployment Insurance Commissioner may request a labour inspector to assist in the investigation of any employer required to contribute in terms of section 8 or 9, as the case may be.

## **CHAPTER 3 GENERAL (ss 16-19)**

### **16 Collection costs**

(1) Subject to subsection (2), the Director-General must, on a monthly basis, defray the costs of collection by the Commissioner from the Unemployment Insurance Fund.

(2) The total amount of the costs contemplated in subsection (1), excluding the start-up capital which must be defrayed from the budget of the Department of Labour, shall be equal to one and a half per cent of the total amount of the payments collected, or where the actual expense exceeds one and a half per cent of that amount, such actual costs.

### **17 Offences and penalties**

(1) A person commits an offence if that person-

- (a) fails to pay any amount due in terms of this Act on the day determined for payment thereof;
- (b) fails to-
  - (i) submit or deliver any statement or other document or thing required to be submitted or delivered by or under this Act;
  - (ii) disclose any information required by or under this Act;
  - (iii) reply to or answer truly and fully any question put to him or her in terms of this Act;
  - (iv) attend and give evidence at an enquiry under this Act where duly required to do so; or
- (c) hinders or obstructs any person in carrying out his or her functions in terms of this Act.

(2) Any person convicted of an offence in terms of this Act is liable on conviction to a fine or imprisonment for a period not exceeding 12 months, or both a fine and such imprisonment.

### **18 Regulations**

The Minister may, by notice in the *Gazette* and after consultation with the

Minister of Labour and the Unemployment Insurance Commissioner, make regulations about any matter which may be prescribed by regulation in terms of this Act or which is necessary to be prescribed for the effective administration of this Act.

**19 Short title and commencement**

This Act is called the Unemployment Insurance Contributions Act, 2002, and takes effect on a date to be determined by the President by proclamation in the *Gazette*.

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<sup>1</sup>R11 662 with effect from 1 July 2006 - GN R621 in GG 28953 of 23 June 2006