



URGENT

TO: THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

BY E-MAIL: presidentrsa@presidency.gov.za

AND TO: THE MINISTER OF EMPLOYMENT AND LABOUR

BY E-MAIL: albertina.barlow@labour.gov.za

1 April 2020

Dear Mr President and Minister Nxesi

URGENT AMENDMENTS TO COVID 19 TEMPORARY EMPLOYEE/EMPLOYER RELIEF SCHEME (GENERAL NOTICE 215 OF 2020)

I write to you as the co-ordinator of the Casual Workers Advice Office ('CWAO'). CWAO, a registered non-profit organisation, provides free advice and assistance to low-paid and precarious workers who lack adequate representation and support in relation to their employment rights. Our offices, situated at the Germiston taxi rank, provide support to tens of thousands of workers from several hundred workplaces large and small from across Gauteng and beyond, and serve as a meeting place for the Simunye Workers Forum where up to 500 workers meet every fortnight to organise, educate and advise one another.

Since the announcement of the national lockdown, CWAO has been approached by workers from many companies located in Gauteng, Western Cape, Eastern Cape and KwaZulu-Natal, who have been 'laid off' with no pay, some for the period of the lockdown, and some for a longer or even indefinite period.

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These are workers who earn weekly, who each support up to 15 South Africans, and whose situation is now truly desperate.

Although these companies are registered with the Unemployment Insurance Fund, the employers in question have not applied for the temporary relief benefit provided for in the COVID 19 Temporary Employee/Employer Relief Scheme (C19 TERS) Directive made by the Minister of Employment and Labour and published in the Government Gazette on 26 March 2020 ('the C19 TERS Regulations').

The C19 TERS Regulations do not compel employers to secure funding through the temporary relief benefit scheme ('the Relief Scheme') so that their employees will receive at least some income during the period of the lockdown. If the employer does not take this action, the employee is left with no income at all: no access to the Relief Scheme, and no remedy.

Workers on the East Rand and in the Eastern Cape who are in this situation, and who have attempted to apply for UIF benefits of their own accord, have been turned away by the Department of Labour; their companies are now closed, and their employers are not answering their calls.

The result is that the C19 TERS Regulations, in their current form, defeat the purpose for which they were made: namely to ensure that employees, whose employers cannot themselves afford to pay wages during lockdown, obtain at least part of their wages for up to three months during the disaster caused by the COVID-19 pandemic. The Regulations make the employees' ability to achieve this entirely dependent on the goodwill of their employers. Employees are left without relief or remedy if their employer does not take this action.



We have been advised that in this regard, the C19 TERS Regulations are liable to be set aside: they are not a reasonable measure of the kind required by sections 27(1)(c) and 27(2) of the Constitution, which guarantee the right of access to social security; and they are irrational.

While members of Cabinet have ‘encouraged’ employers to pay workers who are laid off pending transfers from the Relief Scheme, the C19 TERS Regulations do not oblige employers to do so. Nor does the draft MOU that employers are required to conclude with the UIF require or even permit payment by an employer to workers in advance of receiving payment from the Relief Scheme. In light of acknowledgements by government that delays in Relief Scheme payments are likely (and in the context of a history of UIF delays) this omission too is at odds with the purpose of minimising the economic impact of the COVID-19 pandemic on the most vulnerable in our society.

Further, the Relief Scheme is available only where employers have registered with the UIF. To limit disaster income relief intended for vulnerable workers to only those employed by compliant companies is irrational and unfair: the result is to punish workers for the illegal omissions of their employers. As the Relief Scheme is de-linked from normal UIF benefits, this qualifying criterion should be removed.

We ask that the C19 TERS Regulations be urgently amended so as to give effect to the purpose of the Relief Scheme. We specifically require that the Regulations be amended –

1. to apply to all employers, irrespective of whether they have complied with their obligation to register with the UIF;
2. to oblige employers either to pay their employees for the full period of lay-off, or to apply for relief under the C19 TERS Regulations within 72 hours of publication of the amendment (or, if workers are laid-off after publication of the amendment, within 72 hours of such amendment);



3. to provide that any employer who fails to make the required application within the prescribed time period shall be obliged by law to pay employees in full for the period of the lay-off;
4. to oblige employers, pending receipt of monies from the Relief Scheme in terms of the C19 TERS Regulations, to advance payment to their employees, on their usual payday, at least the minimum wage applicable in their company or sector, or the national minimum wage (whichever is the greatest) subject to an absolute minimum monthly payment of R3,500.

As this matter is self-evidently of the utmost urgency, we ask that you publish the necessary amendments to the C19 TERS Regulations by no later than midday on Friday 3 April 2020, or undertake within that period to do so forthwith and without delay, failing which we shall approach the courts on an urgent basis for appropriate and effective relief.

We also bring to your attention that many employers have forced workers to take statutory leave during lockdown: we ask that regulations be passed outlawing this practice, and that employers should be required to treat lay-off as a result of the covid-19 pandemic as special leave on full pay. We also note that stronger legislative measures are necessary in order to compel employers in essential services to provide workers with the necessary health and safety protections. We ask for further regulations requiring all employers in essential services to:

- provide safe transport for workers, at company expense
- provide every essential service worker with hand sanitizer, gloves and masks
- arrange for frequent and repeated testing to identify workers infected with covid-19
- pay no less than R3,500/month to essential services workers working less than 40 hours/month.

We look forward to hearing urgently from you.



Yours faithfully

A handwritten signature in black ink, appearing to read 'Ighsaan', written in a cursive style.

IGHSAAN SCHROEDER

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