

Update to UIF TERS benefits regarding forced annual leave

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The Department of Employment and Labour late last week announced an amendment to the Temporary Employee Relief Scheme (TERS) will be of great importance to any employer which has required employees to take compulsory annual leave during the national lockdown.



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In an amendment to the Directive establishing the Covid-19 TERS scheme, and to the direction issued on 8 April 2020, the TERS scheme now allows that:

“ An employer who has required an employee to take annual leave during the period of the lockdown in terms of section 22(1)(b) of the Basic Conditions of Employment Act, 75 of 1997, may set off any amount received from the UIF in respect of that employee's Covid-19 benefit against the amount paid to the employee in respect of annual leave provided that the employee is credited with the proportionate entitlement to annual leave in the future. ”

In terms of the above amendment, if the employer placed any employees on compulsory annual leave in order to continue payment to that employee during the lockdown, and although the original structure of the TERS scheme made it difficult, or unclear about whether this payment constituted remuneration (which ordinarily cannot be recovered from TERS), the new amendment makes it clear that the employer can recover this amount from TERS, as long as the employee's leave entitlement is reversed and credited back to the employee.



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It must be noted that the reference in the new section is incorrect. Section 22(1)(b) is a reference to a when a sick leave

cycle ends, and the correct reference is presumably to section 20(10)(b) of the BCEA which is the enabling provision which entitles an employer to place an employee on compulsory leave.

The wording of the new section seems to restrict this set-off only to employers who have placed employees on compulsory leave, but would not extend to an employer who allowed an employee, on application by the employee, to do so. We do not believe that this is the purpose of this amendment and that any employer which has placed or allowed employees to use their annual leave entitlement during the lockdown, would be entitled to the set-off.

As always a full accounting of the leave used, the leave credited, the value of the leave and the value of the set-off must be maintained to demonstrate to the UIF that lawful set-off has taken place.

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