

# Better benefits beat blue card blues

**T**he Unemployment Insurance Fund (the 'Fund') provides some relief to workers who suddenly find themselves unemployed. The Fund also provides benefits to workers (who have paid UIF contributions whilst employed) who become ill, pregnant or adopt children under two years and to the dependants of workers who have passed away.

As from 1 April 2002, the Fund falls under the new Unemployment Insurance Act, 63 of 2001. This new Act replaces the Unemployment Insurance Act, 30 of 1966. In general the new Act improves the benefits available to unemployed people:

- ❑ The scope of employees covered by unemployment insurance has widened.
- ❑ Domestic and seasonal workers, who previously were not eligible for unemployment benefits will be able to apply for unemployment benefits (as from 1 April 2003).
- ❑ Gender discrimination has been removed by separating maternity and unemployment benefits (previously if a pregnant worker received maternity benefits from the Fund, this would reduce her entitlement to unemployment benefits).
- ❑ There is a graduated/progressive benefit scheme providing for higher percentage payments to low income workers and lower percentage

*The new Unemployment Insurance Act comes into effect from April 2002. Dawn Norton looks at what this will mean for the unemployed.*

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payments to higher income workers (a range of between 60% of income replacement for low income employees and 30% for high income employees is likely to take effect).

- ❑ Stricter enforcement and compliance measures have been introduced to compel employers to make UIF payments and to correctly disclose information about their employees wages.

## **The old Act**

Under the old Act unemployment benefits were only available to contributors earning below a specified amount (this amount was R97 188 per annum). Benefits were calculated at 45% of the contributor's normal weekly earnings based on the last weekly wage. An employee must have been employed for 13 weeks during the last year before the employee qualified for benefits. An employee was entitled to one week's

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benefits for every six weeks of employment as a contributor to the Fund. The maximum benefit an employee could receive was 26 weeks in any period of 52 weeks.

### The new Act

Coverage of workers will be extended to employees earning above the current UIF annual income threshold of R97 188 (or R8 099 per month). Furthermore, coverage (as from April 2003) will extend to domestic workers and seasonal workers previously excluded. The definition of 'domestic worker' includes a gardener, a person employed by a household as a driver; and a person who takes care of any person in that home. A 'seasonal worker' is a person employed for a total of at least three months over a 12-month period with the same employer and whose work is interrupted by reason of a seasonal variation in the availability of work.

The Act does not, however, apply to employees who are employed for less than 24 hours a month with a particular employer; employees who receive remuneration under Learnership Agreements (in terms of the Skills Act); employees in the national and provincial spheres of government or persons who are not South African citizens.

Instead of the current scheme of 45% income replacement, the Act makes provision for a graduated benefit scheme. Benefits will be based on income replacement ranging from 60% for lower income earners to 30% for the middle and high-income earners.

A contributor's entitlement to benefits accrues at a rate of one day's benefit for every completed six days of employment. Benefits are accumulated up to and limited to 34 weeks in a four-year period. A contributor is eligible only for the amount he or she accrues (to a maximum of 34 weeks in a four-year period). For example,

if a person has worked for two years in a four-year period then he or she is entitled to 17 weeks of benefits. Previously, there was no cap on the entitlement to benefits that an employee could accrue although an employee could only claim a maximum of 26 week's benefits in any one year.

Maternity and unemployment benefits are separated so that employees who go on maternity leave may do so without having to deplete their unemployment benefits. The contributor may claim benefits for the maximum duration of 34 weeks after being continuously employed for four years and if a contributor has already drawn benefits except for maternity benefits in the preceding four years, the number of days for which the contributor is eligible to claim is reduced accordingly.

The amount of a contributor's entitlement to benefits may be calculated in one of two ways:

- Contributors who earn less than a particular amount (referred to in the Act as the 'benefit transition income level' and currently set at R8 099 per month) are entitled to a percentage of their previous pay.
  - Contributors who earn more than a particular amount (currently set at R8 099) are entitled to a flat benefit.
- Employees will only receive the monthly benefits set out in the chart if they have worked for at least six months. Lower

### Scale of benefits\*

Monthly income	% of benefits	Monthly amount
R500	55%	R279
R1 000	53%	R527
R1 500	50%	R754
R2 000	48%	R965
R3 000	45%	R1 355
R8 099	38%	R3 077
R10 000	30%	R3 077

\* figures rounded off to the nearest 10

earning workers receive a higher percentage of benefits than higher earning workers. Employees earning at the threshold level or above receive a flat rate of R3 077 regardless of the extent to which their earnings exceed the threshold level.

A contributor is not entitled to benefits for any period that the contributor received a monthly pension from the state; received a benefit for a temporary disability preventing them from working from the compensation fund established under the Compensation for Occupational Injuries and Diseases Act (COIDA) or received a benefit from an employment fund or scheme established by a bargaining or statutory council. A contributor is also not entitled to benefits if he or she fails to comply with the Act or any law relating to unemployment or is suspended from receiving benefits by making a false statement; submitting a fraudulent application and failing to inform a claims officer about resuming work.

The new Act retains the five statutory benefits for reasons of unemployment; maternity; illness; adoption; and dependants on deceased contributors.

### **Unemployment benefits**

An unemployed contributor is entitled to unemployment benefits for any period of unemployment lasting more than 14 days if the reason for unemployment is that the contract of employment or the fixed term contract came to an end; the employee was dismissed; or the employer went insolvent.

The contributor must fill out the prescribed form and register as a work seeker with the labour centre established under the Skills Development Act. The application for unemployment benefits must be made within six months of the termination of the contract of employment. If the claims officer approves the application, the contributor must report to the employment office to

confirm that he/she has been unemployed for the period in respect to which the unemployment benefit has been claimed and to confirm that he/she is capable and available for work. The Fund makes payments retrospectively from the date of unemployment, usually on a monthly basis.

An unemployed contributor is not entitled to benefits if he/she fails to report at the times and dates stipulated by the claims officer or the contributor refuses, without good reason, to undergo training and vocational counselling for employment under any scheme approved by the director-general.

It is worth pointing out that employees frequently do not apply for unemployment benefits because they fear this may imply that either they have accepted their dismissal or have waived their right to claim reinstatement. This is not correct. Applying for benefits does not compromise a challenge to the fairness or lawfulness of a dismissal.

### **Illness benefits**

A contributor is entitled to illness benefits if the period of illness is more than 14 days. The contributor is paid the difference between any sick leave pay which the contributor has received from the employer or by way of any other law or collective agreement and the maximum benefit payable as if the contributor was receiving unemployment benefits. An application must be made within six months of the commencement of the period of illness. If the contributor cannot lodge the application personally, the claims officer may authorise any other person to lodge the application on behalf of the applicant. The contributor may not receive benefits for any period during which the contributor was entitled to unemployment benefits or adoption benefits or who without good reason

refuses or fails to undergo medical treatment or to carry out the instructions of a medical practitioner, chiropractor or homeopath.

### **Maternity benefits**

A contributor who is pregnant is entitled to maternity benefits. The maximum period of maternity benefits is 17,32 weeks (four months). A contributor must be paid the difference between any maternity benefits paid to the contributor by the employer or by way of any other law or collective agreement and the maximum benefit payable as if the contributor was receiving a benefit for unemployment reasons. The contributor who has a miscarriage during the third trimester ie during the last three months of pregnancy or bears a stillborn child is entitled to a maximum maternity benefit of six weeks after the miscarriage or stillbirth. Application for maternity benefits must be made at least eight weeks before childbirth. The commissioner may on good cause show and accept an application after a period of eight weeks or extend the period of submission of the application up to a period of six months after the date of childbirth.

### **Adoption benefits**

One contributor, (ie not both new parents) is entitled to the adoption benefits in respect of each child and only if the child has been adopted in terms of the Child Care Act, the period that the contributor was not working was spent caring for the child, the child is below the age of two and the application is made in accordance with prescribed requirements.

The entitlement commences on the date that a Court grants an order for adoption. The contributor is paid the difference if any, between an adoption benefit paid to that contributor in terms of any other law, collective agreement or

contract of employment and the maximum benefit payable as if the contributor was unemployed.<sup>1</sup> The application must be made within six months after the date of the order for adoption unless good cause is shown.

### **Dependant's benefits**

The surviving spouse or life partner of a deceased contributor is entitled to dependant's benefits. The application must be made within six months of the death of the contributor. A dependant child of a deceased is entitled to the dependant's benefit if there is no surviving spouse or life partner or if the application by the surviving spouse or life partner is not made within six months of the death of the contributor. A benefit payable to the dependant is the equivalent of an unemployment benefit that would have been payable to the deceased if the contributor had been alive.

### **Appeals**

A person who is entitled to benefits may appeal to the Appeals Committee of the Unemployment Insurance Board if that person is aggrieved by a decision of the commissioner to suspend the person's rights to benefits or relating to the payment or non-payment of benefits.

An appeal must be lodged within 90 days of the decision appealed against. If a person is dissatisfied with the decision of the Appeal Committee that person may refer a dispute to the Commission for Conciliation, Mediation and arbitration (CCMA) for arbitration within 30 days of receiving notice of the decision.

### **End notes**

*1 Interestingly there is no maximum stipulation of time, such as there is with respect to maternity benefits of 17.32 weeks.*

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