

Terms and Conditions of Temporary Employee - Employer Relief Scheme (TERS)

1 Purpose and interpretation of Temporary Employee – Employers Relief Scheme (TERS) Agreement

1.1 This document sets out the terms and conditions that apply to a TERS Agreement concluded to allow employers and workers to participate in a Temporary Employee - Employer Relief Scheme (TERS) as an alternative to retrenchment.

1.2 In order to be eligible to participate in the TERS

1.2.1 the employer must –

1.2.1.1. be in distress or facing distress;

1.2.1.2. be contemplating the retrenchment of workers;

1.2.1.3. have the potential of becoming sustainable through short term relief;

1.2.1.4. be compliant with its statutory obligations.

1.2.2 the workers must –

1.2.2.1. be at risk of being retrenched by the employer; or

1.2.2.2. be subject, or likely to be subject, to reduced working hours or income reduction.

1.3 The TERS Agreement is not a settlement agreement as contemplated in the Labour Relations Act, 66 of 1995 and may not be made an arbitration award in terms of section 142A or an order of the Labour Court in terms of section 158(1)(c) of the said Act.

1.4 If the TERS Agreement is signed by a trade union on behalf of the workers, the agreement is a collective agreement as contemplated in the Labour Relations Act,

66 of 1995.

- 1.5 The TERS Agreement must be interpreted with due regard to the Framework for South Africa's Response to the International Economic Crisis, the Guide to the Temporary Employee - Employer Relief Scheme (TERS), as revised, and issued by the Department of Labour.
- 1.6 This document is incorporated into the TERS Agreement, except to the extent that it has been expressly varied in writing and signed by the consenting parties, in a manner consistent with the documents referred to in clause 1.5.
- 1.7 Subject to clause 1.6, any reference to the TERS Agreement includes a reference to this document.
- 1.8 If the implementation of the TERS would breach any provision of a bargaining council collective agreement or sectoral determination binding on the parties to this agreement, the employer must within 3 working days from the signing of the agreement, apply to the relevant authority for exemption and submit a copy of the application to the Regional Offices of the CCMA.
- 1.9 For purposes of calculating a worker's remuneration and the training allowance claimed, regard must be had to the worker's remuneration in the preceding tax year calculated in terms of the Unemployment Insurance Contributions Act, 4 of 2002.

2 Employer's rights and obligations during the TERS

During the period of the TERS, the employer –

- 2.1 is not required to pay any remuneration to the listed workers, except as provided for in the TERS agreement;
- 2.2 must release the workers on the TERS from their normal employment functions and allow them to attend the training agreed upon;
- 2.3 must pay all contributions (i.e. both the employer's and the workers' contribution) of the basic social security package to which the workers are entitled at the time of the commencement of the Temporary Employee - Employer Relief Scheme (TERS);
- 2.4 must ensure that an accurate record of attendance by workers participating in the training is maintained;
- 2.5 must submit a certified copy of the attendance register to the relevant SETA on a weekly basis;
- 2.6 must keep the original attendance record and allow them to be inspected by a

representative of the relevant SETA.

3 Workers' rights and obligations during the TERS

- 3.1 During the period of the TERS, the listed workers –
- 3.1.1 remain in the employment of the employer but are not entitled to receive their normal remuneration;
 - 3.1.2 will receive, if they are on full lay-off, an allowance equal to 75% of the worker's basic wage, subject to a maximum allowance of R R12,840-00¹ per month.
 - 3.1.3 will receive, if they are on short-time, a proportionate allowance as specified in the Agreement;
 - 3.1.4 must participate in training at the time and place agreed by the parties, or when training is available, and sign an attendance register at least once a day;
 - 3.1.5 must complete the training agreed upon within the specified time; and undergo any assessment associated with the training;
 - 3.1.6 will receive their basic social security package (the employer will pay all contributions) for the duration of the TERS period;
 - 3.1.7 will only receive additional social security benefits, by agreement between the parties;
 - 3.1.8 may not be retrenched whilst participating in the Temporary Employee - Employer Relief Scheme (TERS); and
 - 3.1.9 remain entitled to receive board and occupy accommodation that are provided in terms of their contract of employment.
- 3.2 Participation in the TERS does not interrupt the continuity of service of the listed workers, and for the purposes of determining their length of service for any purpose, including the calculation of severance pay in terms of the Basic Conditions of Employment Act, 75 of 1997 or any agreement, the workers are deemed to have been employed on their normal terms and conditions of employment during the period of the TERS.
- 3.3 A listed worker who at any stage during the TERS period communicates that he or she no longer wishes to participate in the TERS, loses the benefit of the TERS

¹ Amount subject to change

Agreement and is not entitled to be paid the training allowance from the date he or she ceases to participate in the scheme.

3.4 An worker who resigns during the TERS period –

3.4.1 must be treated in accordance with his or her terms and conditions of employment, read with the provisions of the TERS Agreement to the extent that they are applicable to the worker;

3.4.2 will not be entitled to receive the TERS allowance after the date on which the resignation takes effect.

4 Payment of allowance and deductions

4.1 The worker will be paid the allowance in a manner specified in the agreement between the SETA and the employer.

4.2 No deductions may be made from the workers' allowances unless permitted in terms of the agreement or required in terms of any law or by an order of Court.

4.3 The Agreement may authorise the deduction from the allowance of a listed worker's contribution to additional social security benefits (i.e. those social security benefits that do not form part of the basic social security benefits package).

5 Transfer of business as a going concern

If a transfer contemplated in section 197 of the Labour Relations Act, No 66 of 1995, occurs during the TERS period, the rights and obligations in terms of the TERS Agreement are transferred to the new employer in terms of section 197 and the employer must give a copy of the TERS Agreement to the new employer.

6 Discipline during the TERS period

6.1 The disciplinary rules and procedures applicable to the parties at the commencement of the TERS period apply during the TERS period to the extent that they are appropriate.

6.2 Failure by a worker to attend training does not constitute a disciplinary offence. However, workers are not entitled to receive the allowance for any day on which they do not attend training, unless they qualify for payment on that day as provided for in this agreement.

6.3 The time periods of any warnings issued to workers on a TERS prior to the commencement of the TERS period do not run during the TERS period.

7 Paid Leave

- 7.1 A worker's entitlement to annual leave, paid sick leave, family responsibility leave, maternity leave (as well as any other form of leave that the worker is entitled to in terms of any agreement) -
- 7.1.1 that has accrued to the worker prior to the commencement of the TERS remains to the credit of the worker;
 - 7.1.2 continues to accrue to the worker during the TERS as if the worker was working.
- 7.2 A worker who on account of sickness or injury is absent from training will be entitled to receive paid sick leave at the level of the training allowance if the worker would have received paid sick leave had they been working. The normal rules concerning proof of incapacity apply.
- 7.3 A worker who takes annual leave or family responsibility leave during the TERS will be paid the training allowance during any period of leave taken. For the purposes of calculating the worker's entitlement to family responsibility leave, the worker will be considered to have taken half of the period of family responsibility leave taken during the TERS.
- 7.4 A worker who commences maternity leave during the period of the TERS must be treated for all purposes as if she was working when her maternity leave commences.
- 7.5 If a public holiday falls on a day on which the workers would otherwise receive training, the workers will receive their training allowance for that day.

8 Dispute resolution process

- 8.1 If the TERS Agreement is a collective agreement and there is a dispute about the interpretation and application of the agreement, any party to the dispute may refer the dispute to the CCMA for conciliation and arbitration in terms of section 24 of the Labour Relations Act, No 66 of 1995.
- 8.2 If the TERS Agreement is not a collective agreement and there is a dispute about the interpretation and application of the agreement, the parties agree –
- 8.2.1 that the CCMA may appoint a commissioner to conciliate the dispute; and
 - 8.2.2 to comply with any award made by the commissioner in terms of section 135(3)(c) of the Labour Relations Act, 66 of 1995.

8.3 The parties agree that any dispute in terms of, or arising out of the implementation of, the TERS Agreement, may be set down by the CCMA on short notice, on a date to be arranged with the parties, provided that the parties will avail themselves for conciliation, mediation and arbitration, if necessary, of the dispute within seven (7) days from the date of the referral.

9 Further consultation or facilitation

The conclusion of this Agreement does not prevent the initiation or continuation of any consultation in terms of section 189 or any facilitation in terms of section 189A of the Labour Relations Act, No 66 of 1995 in respect of the listed workers during the period of the training layoff.

10 Assistance by CCMA

The parties may, by agreement, request the CCMA to appoint a commissioner to assist the parties by conciliation during any other process which may give rise to the retrenchment of workers participating in or coming out of a Temporary Employee - Employer Relief Scheme (TERS). The parties agree that if the TERS Agreement does not comply with all the requirements, further facilitation or conciliation may take place to ensure compliance.

11 Monitoring and reporting

If requested and unless protected by law¹, the parties will provide any information relevant to monitor the progress and success of the Temporary Employee - Employer Relief Scheme (TERS) to the CCMA, the SETA and the National Skills Fund, which may include the financial position of the employer, payroll reports, proof of compliance with statutory and agreed obligations, attendance records and the effect which the TERS has on the employer and the workers participating in the scheme.

12 Definitions

Unless otherwise indicated in the agreement any word or phrase used in this document has the same meaning as in the Labour Relations Act, No 66 of 1995 or the Basic Conditions of Employment Act, No 75 of 1997 and -

12.1 “Agreement” means the TERS Agreement and includes the list of workers annexed to the Agreement and this document;

12.2 “basic wage” is the wage or salary an worker receives for their ordinary hours of work and regular contractual overtime;

12.3 “basic social security package” means –

- (i) the employer and worker contributions to the Unemployment Insurance Fund calculated on the basis of the training allowance;
- (ii) contributions provided for in the workers' contract of employment to death and disability cover;
- (iii) contributions provided for in the workers' contract of employment to a pension or provident fund;

12.4 “listed workers” means the workers on TERS listed in terms of the Agreement.

¹ Information which is confidential or privileged.