



21 August 2017

SSETA COMMUNICATION TO STAKEHOLDER - UNEMPLOYMENT INSURANCE AMENDMENT ACT 10 OF 2016

1. The Services SETA has received a number of queries from employers and stakeholders in relation to the application of the Unemployment Insurance Act, No 63 of 2001 (“the UIF Act”), as amended by the 2016 Unemployment Insurance Amendment Act (“the Amendment Act”) (collectively the “Amended UIF Act”) insofar as contributions to the Unemployment Insurance Fund (“the Fund”) are concerned.
2. In response to these queries we have set out below the Services SETA’s understanding:-
 - 2.1. of the Amended UIF Act with specific reference to the definition of employees;
 - 2.2. as to whether, given the fact that the Unemployment Insurance Contributions Act, No 4 of 2002 (“the Contributions Act”) has not been amended, learners and their employers are required to contribute to the Unemployment Insurance Fund (“the Fund”).
3. For the purpose of this correspondence it is important to understand that the Amended UIF Act and the Contributions are two distinct Acts, each with their own distinct purpose and function.
4. Without wanting to oversimplify matters:-
 - 4.1. the Amended UIF Act, amongst others :-



- 4.1.1. creates the Fund;
- 4.1.2. regulates the payments to be made in terms of the Fund;
- 4.2. the Contributions Act, amongst others:-
 - 4.2.1. provides for the imposition, methodology and collection of contributions for the Fund.
5. At the outset it is imperative to understand that the Amendment Act relates only to the amendment of the UIF Act and has no impact and or effect on the Contributions Act.
6. In order to qualify for protection in terms of the Amended UIF Act an employee would have to be an employee who is employed by an employer and is remunerated as is envisaged in terms of the Amended UIF Act.
7. That being said it is only employees and employers, as defined in terms of the Contributions Act, that are required to contribute to the Fund.
8. While Section 3 of the Amendment Act has now effectively extended the application of the UIF Act to learners who have concluded a learnership contract with the Services SETA and who receive a stipend the same extension has not been legislated for in the Contributions Act.
9. In the Contributions Act, being the Act that provides for the imposition and collection of contributions for the benefit of the Unemployment Insurance Fund the following is provided for, at Section 4, being that the UIC Act applies to all employers and employees, other than, amongst others:-



“employees under a contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998), and their employers.”

10. It is therefore in fact only Section 3 of the UIF Amendment Act, and not the Contributions Act, that is amended by the Amendment Act
11. As such there is currently no mandate to compel learners and their employers to contribute to the Fund as the Contributions Act only requires employers and employees to whom the Contributions Act applies to, on a monthly basis, contribute to the Fund. As is evident from 9 above the Contributions Act does not find application insofar as learners are concerned.
12. Having determined that the UIF Amendment Act and the Contributions Act are not aligned the Services SETA's Legal Department contacted the Department of Labour (“the Department”) who confirmed that:-
 - 12.1. the Services SETA's assessment of the legal position as set out 21 was in fact correct;
 - 12.2. until the UIC Act had been amended there was no obligation for employers and learners to contribute to the Fund;
 - 12.3. notwithstanding payments (contributions) by and for learners they would not be covered by the Fund.
13. The above position has also been confirmed with treasury.
14. While the Department seems to be aware of the anomaly that has been created by not aligning the UIF Act with Contributions Act the Department has thus far elected not to communicate this to stakeholders and they do not have a plan of action to deal with contributions which have been paid and which should, by all accounts, not have been paid.



15. We confirm that we are dealing with the Department in relation to the above and our further advices will follow in due course.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andile Nongogo', written over a horizontal line.

Andile Nongogo

CEO