

EMPLOYMENT RIGHTS ACT 2008
Act No.33 of 2008

Termination of Employment and the Workfare Programme

The Employment Rights Act, *Act No. 33 of 2008* provides for the setting up of a Workfare Programme and a new regime regarding Termination of Employment.

The Workfare Programme embodies the flexicurity model which aims to provide flexibility to enterprises whilst at the time guaranteeing security and protection to employees whose services have been terminated.

This Guidance Note covers certain essential features of the Workfare Programme and the law relating to Termination of Employment.

1. What constitutes the Workfare Programme?

The Workfare Programme consists of:

- (a) the payment of a Transition Unemployment Benefit (TUB) to every worker whose agreement has been terminated.
- (b) assistance for the following activities:
 - (i) job placement
 - (ii) training and re-skilling
 - (iii) starting up of a small business.

2. Relevant Bodies providing Activities of the Workfare Programme

<u>Activity</u>	<u>Body</u>
Payment of TUB	Minister of Social Security, National Solidarity and Senior Citizens Welfare & Reform Institutions
Job Placement	Employment Service of the Ministry for job placement (Ministry of Labour, Industrial Relations & Employment)
Training & Re-skilling	Human Resource Development Council (HRDC)
Starting-up of Small Business	Small Enterprises and Handicraft Development Authority (SEHDA)

3. Eligibility to join the Workfare Programme

A worker whose contract of employment is terminated by an employer due to any of the following reasons is eligible to join the Workfare Programme:

- (a) the employer ill treats the worker
- (b) the employer fails to pay remuneration due under the contract of employment
- (c) discrimination on the grounds of a worker's race, colour, national extraction, social origin, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, marital status or family responsibilities
- (d) a worker's absence from work during maternity leave
- (e) a worker's temporary absence from work because of injury or sickness duly notified to the employer and certified by a medical practitioner
- (f) trade union membership or participation in trade union activities
- (g) a worker filing in good faith a complaint or participating in proceedings against an employer involving alleged breach of any terms and conditions of employment
- (h) a worker exercising any of his rights under the Employment Rights Act or any enactment or in a contract of employment or collective agreement or award
- (i) economic, technological, structural or reasons of similar nature affecting the enterprise
- (j) misconduct
- (k) poor performance.

4. Exclusion of certain categories of Worker under the Workfare Programme

The following categories of workers are excluded from the Workfare Programme:

- (a) a public officer
- (b) a person employed by a parastatal body or by a local authority
- (c) a part-time worker
- (d) a migrant worker
- (e) a worker employed in the sugar industry who voluntarily retires in the context of a:
 - (i) Voluntary Retirement Scheme under Section 23 of Sugar Industry Efficiency Act 2001
 - (ii) Early Retirement Scheme under Section 23A of the Sugar Industry Efficiency Act 2001 or
 - (iii) factory closure pursuant to Section 24 of the Cane Planters and Millers Arbitration and Control Board Act
- (f) a worker reckoning less than six months continuous service.

5. Election for Workfare Programme

- (a) A worker has seven days within the termination of his employment to register himself with the Permanent Secretary, Ministry of Labour, Industrial Relations and Employment when he elects to join the Workfare Programme.
- (b) A worker who has registered himself in the Workfare Programme shall within seven days opt for any of the activities specified at Paragraph 1 above and the Permanent Secretary of the Ministry of Labour, Industrial Relations and Employment shall refer to any of the relevant bodies as referred at Paragraph 2 above
- (c) Once a worker has elected any of the activities of the Workfare Programme, the Permanent Secretary, Ministry of Labour, Industrial Relations and Employment shall within seven days notify the Permanent Secretary of the Ministry of Social Security, National Solidarity and Senior Citizens Welfare & Reform Institutions and the worker shall be paid the TUB.

6. Transition Unemployment Benefit (TUB)

- (a) A worker whose services have been terminated is guaranteed a minimum of one month TUB.
- (b) The maximum period for the TUB is twelve months.
- (c) The rates payable for the TUB are as follows:

Period after Termination of Employment	Rate of benefit per month
First three months	90% of basic wage or salary up to the NSF ceiling but not less than Rs3000
From 4 th to end of 6 th month	60% of basic wage or salary up to the NSF ceiling but not less than Rs3000
From 7 th to end of 12 th month	30% of basic wage or salary but not less than Rs3000

- (d) The TUB payable is based on the maximum basic wage or salary as specified in the National Savings Fund (Collection of Contributions) Regulations 1997.
- (e) A minimum of Rs3000 as TUB is guaranteed.
- (f) The Transition Unemployment Benefit shall cease at the end of the month in which the worker:
 - (i) opts out of the Workfare Programme
 - (ii) becomes gainfully employed or refuses an offer for job placement for a second time
 - (iii) is admitted by the HRDC to a training or re-skilling scheme
 - (iv) sets up a small business with the assistance of the SEHDA
 - (v) reaches the retirement age.
- (g) During the period when the worker is a beneficiary of the TUB, the total social security contributions payable under Section 17 of the National Pensions Act shall be paid from the Workfare Programme Fund in respect of that worker.

7. Establishment of Workfare Programme Fund

- (a) A Workfare Programme Fund is established which shall be managed by the National Savings Fund.
- (b) The Workfare Programme Fund shall be financed by the following ways:
 - (i) money collected by way of levy from employers under the HRDC Act 2003
 - (ii) monies appropriated by the National Assembly for the purposes of the Workfare Programme
 - (iii) interest in investments.
- (c) The following disbursements will be effected by the Workfare Programme Fund:
 - (i) payment of TUB
 - (ii) total social security contributions of workers during the period they receive TUB
 - (iii) all expenses incurred in administration of the Workfare Programme Fund.

8. Financing of the TUB

Employers have been contributing 1% of their actual wage bill up to now by way of levy under the HRDC Act, *Act No. 27 of 2003*. The employers' contribution is raised from 1% to 1.5% and out of this 1.5%, 1.0% will now be directed to the Workfare Programme Fund.

- (a) 50% of TUB shall be financed by the Workfare Programme Fund.
- (b) 50% of TUB shall be financed as follows:
 - (i) recycling fee paid by an employer in the individual National Savings Fund Act of a worker and any interest accrued thereon
 - (ii) 1% contribution of the worker to his individual National Savings Fund Account.

9. Payment of Severance Allowance

Notwithstanding the establishment of the Workfare Programme, a worker whose services have been terminated may contest the reasons of his termination and decide not to join the Workfare Programme and claim severance allowance at the Industrial Court.

- (a) A worker who reckons more than 12 continuous months of service can enter proceedings on his own or the Permanent Secretary may enter proceedings on his behalf before the Industrial Court, when the agreement of the worker has been terminated by the employer.
- (b) When the Industrial Court finds that the reasons of termination do not constitute valid reasons warranting the termination of employment of the worker, the court can order that the worker be paid severance allowance.
- (c) The quantum of severance allowance would be a sum equivalent to 3 months' remuneration per year of service.
- (d) In calculating the severance allowance, remuneration is deemed to include any sum paid by way of commission of services and is the best estimate of what the person was drawing over a period not exceeding 12 months prior to his termination of employment.
- (e) The Court where it thinks fit may order an employer to pay interest at a rate not exceeding 12 per cent per annum on the amount of severance allowance payable from the date of termination of the agreement to the date of payment.

10. Deductions from Severance Allowance

The following deductions from severance allowance can be effected by an employer:

- (a) Any gratuity granted by the employer.
- (b) Any contribution made to any pension or provident fund or scheme set up by the employer for the benefit of the worker.
- (c) Any recycling fee already paid.

11. Payment of Recycling Fee

- (a) Where an employer terminates the agreement of a worker, he shall in respect of that worker pay within 30 days from the date of termination, a recycling fee.
- (b) The recycling fee is payable to the National Pensions Fund for credit to the National Savings Fund Account of the worker.
- (c) At the time of payment of the recycling fee a return shall be submitted.

- (d) The rates payable are as follows:

Length of Continuous Service	Basic Wage or Salary Per Year of Service
Between 1 and 3 years	3 days'
More than 3 years up to 10 years	6 days'
More than 10 years up to 20 years	10 days'
More than 20 years	15 days'

- (e) No recycling fee is payable in respect of a worker who reckons less than 12 continuous months' of service and whose services have been terminated.

12. Notice of Termination

- (a) A contract of employment can provide for the length of notice to be given between parties.
- (b) Subject to any express provision in the contract of employment, the length of notice to be given shall be 30 days.
- (c) An employer or a worker may pay to the other party remuneration in lieu of notice.
- (d) Written notice shall be given to the Minister:
- (i) In a case of reduction of workforce or closure of the enterprise on economic, technological, structural or similar nature reasons,
 - (ii) In a case of termination of employment for any other reason.

13. Protection against Termination of Agreement

A worker's employment shall not be terminated for reasons related to the worker's misconduct and for reasons related to the worker's poor performance unless the employer in good faith cannot take any other cause of action and the worker has been afforded an opportunity to answer any charge made against him in relation to his misconduct and poor performance.

14. Agreement on the Quantum and the Payment of Compensation

- (a) Where the contract of employment of a worker or a group of workers is terminated, the worker, the group of workers or the trade union recognised by the employer may agree on the quantum and the payment of a compensation with the employer.
- (b) In such a case where an agreement has been reached
 - (i) the worker shall not join the Workfare Programme
 - (ii) the employer shall not be required to pay the recycling fee.

4 February 2009