



## DEPARTMENT OF LABOUR

### A GUIDE TO THE TRAINING LAYOFF SCHEME

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#### 1. Background

The framework document titled; 'Framework for South Africa's response to the international economic crisis' contains the response of organized labour, business, community and government to how South Africa should respond to the difficult economic conditions facing the country, its people and businesses as a result of the international economic crisis.

A key principle governing the response is to ensure that all activities are aimed at strengthening the capacity of the economy to grow and create decent jobs once the current crisis is over. Training and skills development is an important element of the response and is one of the main ways in which human capacity can be strengthened during a period of economic downturn.

In recognition of this, the framework document prioritises training and skills development (section 4.8, pg. 17) and introduces the training layoff as follows:

*Training and skills development need to be prioritized, quality improved and the learnership programmes enhanced. In addition to other measures to avoid retrenchment, one further option that the parties will consider is training layoffs, financed by the National Skills Fund (NSF) and Sector Education and Training Authorities (SETAs), for workers whose employers would ordinarily retrench them and which can be introduced on terms that would keep them in employment during the economic downturn, but re-skill them as an investment for the future economic recovery.*

This document provides an overview of and a guide to the training layoff scheme. It has been compiled by the Department of Labour based on the outcome of discussions in the Employment Task Team and the Leadership Team of the economic response initiative. It outlines the principles governing the training layoff scheme and the main elements of the training layoff implementation. This document is aimed at informing those who will be involved in implementing the training layoff scheme, as well as employers, trade unionists and workers.

## **2. What is a Training Layoff?**

A training layoff is a temporary suspension of work of a worker or group of workers that is used for training purposes. The layoff depends on an agreement between an employer and workers who may otherwise be subject to dismissal for operational requirements.

Participation in a training layoff is voluntary. There is no expectation that employers or workers must engage in a training layoff, although those that do agree to participate will be subject to the general rules and procedures that have been agreed to by the social partners in the NEDLAC process.

The employer must agree to continue the contract of employment. While parties are free to negotiate higher levels of social benefit contributions (such as medical scheme contributions and housing allowances) employers are asked to pay full contributions to a basic social security package (i.e. disability and death cover, pension/provident funds, unemployment insurance) during the training period. In other words, the aim is to ensure that the contract of employment remains in place and only the wage component changes.

The worker(s) agrees to forego his/her normal wage, to attend a training programme and to accept a training allowance during the period of training.

### **2.1. Broad principles**

As outlined in the Framework Agreement, a training layoff scheme should be aimed at companies that are in distress due to the economic situation and their workers who may as a consequence be at risk of retrenchment. Companies that are in distress are those who experience financial difficulty due to the downturn and who may be considering retrenchments and possible closure.

A National Jobs Fund, with an initial allocation of R2.4 billion, will be set up to finance the training layoff scheme. The funds for the National Jobs Fund have been made available by the National Skills Fund (NSF) and the Unemployment Insurance Fund (UIF).

The key design elements of the scheme that have been agreed to by the social partners and as announced by the President on 5<sup>th</sup> August, are as follows:

- A temporary suspension of work used for training;
- Retention of the employment contract;
- Training to be flexible, but linked to the skills needs of the company;

- A training allowance paid to the worker;
- Employer carries cost of a basic package of social benefits.

A training layoff scheme is based on the principle that it will be available to vulnerable workers and employers who are affected by the economic recession. In order to ensure its successful implementation, it will rely on the collective efforts of the following entities:

- Commission for Conciliation, Mediation and Arbitration (CCMA) – responsible for facilitating and overseeing all training layoff consultations and agreements, including agreements between small employers and non-unionised workers;
- SETA's will be responsible for facilitating the provision of training, funding training costs applying to the NSF for training allowances and disbursing funds to firms;
- The NSF (with financial support of the UIF) will be responsible for processing applications for training allowances and, in certain cases, training costs.
- The Department of Labour (DOL) will be responsible for oversight and monitoring of the training layoff scheme, including the distribution of an implementation guide;
- The Department of Trade and Industry (“the dti”) will responsible for ensuring that distressed sector support is coordinated with the training layoff scheme;
- The Economic Development Department (EDD) will be responsible for assessing the economic and developmental impact of the training layoff scheme.

Employers stand to gain from a training layoff by reducing payroll costs for a period so as to ensure that the company remains afloat and has an opportunity to strengthen itself and therefore be in a position to reabsorb workers. Employers also have an opportunity to build the skills of their workers at little or no cost to the company. The training layoff scheme should not be used opportunistically by employers to reduce costs irrespective of their financial situation.

Workers under threat of retrenchment should consider a training layoff as a serious option, rather than opting for a severance package. Workers gain further skills through a training programme at no cost and their access to social benefits is maintained at no cost to them. And they retain their contract of employment for longer. They also have access to an allowance – further details of which are provided below.

Social partners agree that for the training layoff scheme to be a success, it will be necessary for them to make joint efforts to communicate about the scheme and to remain involved in oversight of the scheme.

## 2.2. Operating principles

The social partners have reached agreement on the following operating principles in respect of the training layoff scheme:

### 2.2.1. Access to the training layoff scheme

Any employer may apply for access to the training layoff scheme. Application may be made either directly to the CCMA or it may emerge as an alternative to retrenchment once an employer has made an application to the CCMA in terms of section 189A of the Labour Relations Act (no. 66 of 1995).

Employers, after consultation with a trade union or affected workers, may combine the training layoff with short-time work arrangements.

### 2.2.2. Contract variation

Collective agreements varying conditions of employment will be negotiated and concluded by the relevant employer and trade union. The CCMA will be responsible for facilitating consultation on the training layoff and the conclusion of agreements, including agreements between employers and individuals.

Where an agreement is entered into independently of the CCMA, the body will have responsibility to ensure that the agreement complies with the terms of the training layoff scheme.

### 2.2.3. Social benefit contributions

While parties are free to negotiate higher levels of social benefit contributions (such as medical scheme contributions and housing allowances), the basic package to be covered in full by all employers participating in the scheme – subject to the provisos set out below – will include all social risk (such as death and disability cover), UIF and retirement benefits:

- Employers will pay social risk benefits in full;
- In respect of UIF and retirement benefits, the default position is that employers must cover both employer and employee contributions unless exceptional circumstances justify lower contributions for one or both sets of benefits.
- Lower contributions may be made on conditions that the principle of continued UIF and retirement fund membership is guaranteed, and that the employer and the trade union, as well as a third party (such as a CCMA commissioner), are

satisfied that the company is indeed unable to make full contributions to the UIF and/or retirement fund.

#### 2.2.4. Training allowance

The training allowance will be set at 50% of an employee's basic salary, subject to an overall cap of the UIF threshold. This means that the maximum monthly allowance payable to any employee participating in the training layoff scheme will be R6 239. This allowance will be guaranteed for three months, subject to the possibility of an additional three month's coverage.

#### 2.2.5. Eligibility

The training layoff scheme is limited to employees earning up to R180 000 per annum.<sup>1</sup> However, as is mentioned above, no employee shall receive an allowance of more than R6 239 per month.

In the case of workers on short-time arrangements, the monthly limit of R6 239 shall apply. This would mean that any worker on short-time who enters a training layoff may only apply for a training allowance equal to the difference between wages earned through short-time and 50% of his/her normal monthly wage up to a combined monthly total of no more than the limit of R6 239.

#### 2.2.6. Training

Training of workers in distressed companies should as far as possible be linked to the skills needs of the company and, in particular, to the skills that may sustain the business and position it to benefit from improved economic conditions.

Various training options may apply depending on the nature of the business, the position of workers whose jobs are at risk and future economic opportunities for the company. The menu of training options may include apprenticeships and learnerships and skills programmes of shorter duration.

Training may also include training on generic workplace skills. In this regard, the training layoff provide an opportunity for adult basic education and training (ABET) courses, training on a basic ICT package and other generic skills that may further personal development.

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<sup>1</sup> This is based on 20% above the UIF threshold of R149 736 per annum.

### 2.2.7. Financing the training layoff

There are **three** financial components to a training layoff;

- **Employment costs.** These will be the social benefit fund contributions to be carried by the employer. The employer should carry both the employer and worker contributions subject to the broad principle outlined above. There are no continued direct wage costs during a training layoff.
- **Cost of training.** The cost of training will depend on the training programme that is agreed on. If it is a learnership, it would follow the usual route of contracting between the learner, employer and provider. The SETA provides the learnership grant and the existing tax allowance applies. It is proposed that other training programmes, for example, a skills programme or internship, be supported by the participating SETA.
- **Cost of the training allowance.** It is proposed that the relevant SETAs apply to the NSF for the cost of training allowances for learners that are in training programmes other than a learnership or apprenticeship.

Workers who are engaged in training layoffs forego their normal wage and only receive the training allowance or learner allowance. The allowance is not subject to any deductions as all contributions to social security benefits (UIF, pension/provident funds, medical aid, etc.) are carried in full by the employer.

### 3. Implementing a training layoff

The route to implementing a training layoff scheme involves the following key steps:

- The employer must give notice to the Commission for Conciliation Mediation and Arbitration (CCMA) requesting facilitation in terms of section 198A (3) of the Labour Relations Act (no.66 of 1995). For purposes of the training layoff, this requirement will apply to all companies irrespective of their size;
- A Training Layoff agreement will be issued by the CCMA at the conclusion of the consultation process in which the relevant training is identified and the training allowance is agreed upon;
- The relevant SETA will advise on training options and carry the cost of the training
- The National Skills Fund (NSF) will fund the cost of the training allowance. It will do so on the basis of an application lodged by the SETA and will transfer funds to the SETA which will, in turn, make transfers to companies and training providers.
- Employers will ensure the payment of training allowances to workers participating in a training layoff.<sup>2</sup>

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<sup>2</sup> Further guidelines for implementation are contained in a separate guide.

#### **4. Way Forward**

A training layoff scheme as outlined above has not been implemented before in South Africa. There are, therefore, a number of unknowns. In particular, it is not possible to predict the take-up rate of the scheme and the value of claims that may be made.

In light of these unknowns, the training layoff will be launched for an initial three month period. Uptake and success of the scheme will then be reviewed by the social partners together with implementing partners, through the Employment Task Team and the Leadership Team of the response initiative. If appropriate, the scheme will be extended.

Implementation would be on the basis of a partnership between the relevant SETAs, the CCMA and relevant government departments. If the training layoff scheme is to be a success, it will be necessary for the social partners and the implementing partners to work in a way that is guided by the following:

- Good communication and cooperation;
- speedy and efficient treatment of applications and disbursement;
- effective mechanisms to avoid any unintended consequences and, in particular, abuse of the scheme;
- involvement of social partners in oversight of the scheme.