



DEPARTMENT OF LABOUR

A GUIDE TO THE TRAINING LAYOFF SCHEME

as on 18 September 2009

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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, workers and members of the community.

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 a trade union on behalf of workers, or, in the absence of a trade union, between an employer and individual workers, who may otherwise be subject to dismissal for operational requirements.

Participation in a training layoff is voluntary. While it is voluntary, the social partners are strongly encouraged to participate in the training layoff as an alternative to retrenchment. 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 continue the contract of employment. While parties are free to negotiate a continuation of existing social benefit contributions (such as medical scheme contributions and housing allowances) employers shall pay full contributions to a basic social security package to which a worker is entitled at the time of the introduction of the training layoff (i.e. disability and death cover, pension/provident funds, unemployment insurance). The payment of these contributions will be for the duration of 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 response, a training layoff scheme should be aimed at employers that are in distress due to the economic situation and their workers who may as a consequence be at risk of retrenchment. Employers that are in distress are those who experience financial difficulty due to the downturn and who are 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 5th 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 employer;
- 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, overseeing or verifying all training layoff consultations and agreements. The CCMA will ensure that training layoff agreements comply with the general rules and procedures of the scheme;
- SETAs will be responsible for facilitating the provision of training, funding training costs, applying to the NSF for training allowances and disbursing funds to employers;
- The NSF (with financial support of the UIF) will be responsible for processing applications for training allowances and, in certain cases, training costs;
- Employers, trade unions and bargaining councils will play an active role in the training layoff scheme;
- 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 be 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 employer 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 cost. 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 alternative to retrenchment, rather than opting for a severance package. Workers gain further skills through a training programme and their access to basic social benefit package is maintained at no cost to them. In addition, 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 familiarize themselves with and make efforts to communicate the scheme and to remain involved in oversight of the scheme.

2.2. Operating principles

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

2.2.1. Voluntary nature of the training layoff scheme

The decision to implement the training layoff scheme is a voluntary one and requires the agreement of the employer, affected employees and their representatives. While it is voluntary, the Social partners are strongly encouraged to enter into a training layoff agreements as an alternative to retrenchment.

2.2.2. Access to the training layoff scheme

Any employer, trade union or individual worker 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.

Employers, after consultation with a trade union or affected workers, may combine the training layoff with short-time work arrangements.¹

Employers that apply for access to the scheme will be expected to be compliant with all statutory obligations.

¹ Access to the training layoff by workers on short-time will be subject to conditions that may be developed by the Department of Labour and the CCMA.

2.2.3. Contract variation

Collective agreements varying conditions of employment may be negotiated and concluded by the relevant employer and trade union for the duration of the training layoff. On conclusion of the training layoff, such agreements should not have the effect of varying downward any conditions of employment unless so agreed elsewhere in this document.

The CCMA will be responsible for facilitating, overseeing or verifying all training layoff consultations and agreements, including agreements between employers and individual workers.

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

Where required, training layoff agreements will be subject to existing exemption procedures contained in bargaining council agreements. Where exemptions are required, these procedures will be fast-tracked by the relevant council.

2.2.4. Social benefit contributions

While parties are free to negotiate a continuation of existing social benefit contributions (such as medical scheme contributions and housing allowances), employers shall pay full contributions to a basic social security package to which a worker is entitled at the time of the introduction of the training layoff (i.e. disability and death cover, pension/provident funds, unemployment insurance). The payment of these contributions will be for the duration of the training period, subject to the provisos set out below:

- Employers will pay basic social 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 condition that the principle of continued UIF and retirement fund membership is guaranteed, and that the employer and the trade union, or in the absence of a trade union, the employee/s, as well as a third party (such as a CCMA commissioner), are satisfied that the employer is indeed unable to make full contributions to the UIF and/or retirement fund.

2.2.5. 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.

Workers on partial layoffs (short-time) shall also be eligible for an allowance equal to 50% of their basic wage, in addition to his or her salary for the days actually worked. In other words, the training allowance – which is subject to the cap of R6 239 – shall be paid over and above the salary earned. By way of example, if an employee earns R1000 a week (R200 a day) and works for two days and is enrolled on the training scheme, they can expect to be paid wages of R400 and a training allowance of R300, equaling a weekly income of R700.

2.2.6. Eligibility

The training layoff scheme is limited to employees earning up to R180 000 per annum.² However, as is mentioned above, no employee shall receive an allowance of more than R6 239 per month.

The training layoff scheme will be available to any eligible worker on a full layoff lasting a continuous period of at least four weeks or a partial layoff (short-time) lasting at least two days a week or 16 days in any eight-week period.

In respect of eligible workers who have been on short-time arrangements over the period 1 June through 31 August 2009, applications to access the training layoff scheme will ordinarily be accepted.

In respect of all other eligible workers who have been or are to be put on short time, the partial layoff should be contemplated for at least eight weeks before an application will be accepted.

² This is based on 20% above the UIF threshold of R149 736 per annum.

2.2.7. Training

Training of workers in distressed companies should as far as possible be linked to the skills needs of the employer 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 employer. The menu of training options may include apprenticeships and learnerships and skills programmes of shorter duration. Training should preferably be NQF aligned, credit bearing training.

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.

2.2.8. 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. Other training programmes, for example, a skills programme or internships, should be supported by the participating SETA. Affected employers are also required to revisit their Workplace Skill Plans and to align it with the training layoff. To assist with this process, SETAs will be required to review their policies and procedures relating to the content of WSPs and ATRs in order to address the training layoff.
- **Cost of the training allowance.** The relevant SETA should apply to the NSF for the cost of training allowances for workers who enter training programmes other than a learnership or apprenticeship. The NSF shall be responsible for paying the training allowance to the relevant SETA and shall do so with minimum delay

2.2.9. Training allowance

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 deductions for the basic social benefit package contributions, but may be subject to tax deductions where applicable.

2.2.10 Other Conditions of Employment

Unless otherwise agreed, and subject to what is set out below, conditions of employment and leave accrued prior to the Training Layoff period continue to be retained to the credit of the employee and ordinarily would be used at the end of the Training Layoff period save as provided below.

When an employee wishes to take an annual leave during the training lay-off period, it should be on the same contractual arrangements that will ordinarily apply in the right to take leave.

During the Training Layoff Period:

- When an employee wishes to take an annual leave during the training lay-off period, it should presumably be on the same contractual arrangements that will ordinarily apply in the right to take leave.
- An employee will accrue sick leave and annual leave, payable at 50% of the ordinary rate.
- An employee will be entitled to maternity leave at the same rate that would have applied outside of the Training Layoff scheme.
- An employee will be entitled to family responsibility leave at 50% of the ordinary rate. Whenever a 50% is used in respect to the pre Training lay off credits, the employee will be credited with the portion that was not paid.

3. Implementing a training layoff

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

- The employer, trade union or worker may give notice to the Commission for Conciliation Mediation and Arbitration (CCMA) requesting facilitation. For purposes of the training layoff, this requirement will apply to all employers irrespective of their size;

- Alternatively, affected parties may conclude a training layoff agreement independently of the CCMA, covering the various issues contained in this document, including the relevant training to be undertaken and the agreed training allowance. This agreement must be submitted to the CCMA. The CCMA will be required to confirm that such agreement complies with agreed general rules and procedures before it can be implemented under this scheme;
- 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 employers and training providers, as soon as possible.
- Employers will ensure the payment of training allowances to workers participating in a training layoff.³

In operationalising the training layoff scheme two concerns will need to be balanced: the need for flexibility in the scheme and the requirement to avoid fraudulent claims or payments. To address these concerns, the Department of Labour will prepare implementation guidelines to deal, inter alia, with the following matters:

- The payment of an allowance being subject to employers providing proof of a worker's attendance at training within a reasonable time period;
- Those administering the training layoff scheme on behalf of any employer being held personally liable if they do not take all reasonable steps to ensure adherence to the scheme's rules;
- The development and implementation of appropriate controls for ensuring compliance with all legal obligations, in particular those arising from the Public Finance Management Act 1 of 1999; and
- Procedures for addressing exemptions from the scheme's rules in exceptional circumstances.

³ Further guidelines for implementation are contained in a separate guide.

In order to ensure expeditious commencement of the scheme, it is agreed that it would initially be in the form of a pilot lasting for six weeks, during which time the scheme would adapt rules and procedures in the light of experience. A Steering Committee consisting of no more than 5 representatives of the NEDLAC constituencies will consider and adopt necessary changes to the rules and procedures.

In the first six weeks of the training layoff scheme's implementation, applications in sectors that have secured a national agreement between organised labour, business and the relevant SETA will be prioritised. Other applications would ordinarily be considered after the pilot period, unless the Steering Committee agrees otherwise.

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, with the first six weeks constituting the pilot phase. Uptake, financial viability 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 for a period to be agreed upon depending on the availability of funds to be made available by government.

Implementation would be on the basis of a partnership between the relevant SETAs, the CCMA, bargaining councils 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 and;
- ensuring that the CCMA is properly capacitated to facilitate and oversee the scheme without detrimentally affecting their day to day functions.