



FURNITURE BARGAINING COUNCIL

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CIRCULAR 10/22

TO ALL EMPLOYERS IN THE INDUSTRY

PROCESSING AND PAYMENT TO ZIMBABWEAN FOREIGN EMPLOYEES FOR LEAVE PAY MONIES, HOLIDAY BONUS FUND MONIES AND PROVIDENT FUND MONIES

1. INTRODUCTION

As you are no doubt aware, Government is in the process of reviewing regulations and implementing measures that may possibly impact on the employment of foreign nationals in South Africa.

The Minister of the Department of Employment and Labour (DEL) Minister Thulas Nxesi, supported by the Minister of the Department of Home Affairs (DHA) Minister Aaron Motsoaledi, unveiled South Africa's first comprehensive National Labour Migration Policy (NLMP) for public comment already in February 2022. This was followed by and goes hand in hand with the proposed Employment Services (ES) Amendment Bill.

Through the draft NLMP the Government has an objective to guide and coordinate the development process leading to the adoption of South Africa's future labour migration strategy. The Amendment Bill on the other hand, proposes a framework that will *inter alia* enable the Minister to set quotas for employment of foreign nationals in future.

A critical skills list, compiled by Government, will apply in future to open avenues to legal employment of only foreign employees who possess certain skills. The Government's envisaged quotas is aimed at limiting the number of immigrants working in some sectors and regulations compelling employers to choose South Africans over immigrants, will also be introduced.

The immediate critical issue, however, relates to the Government's decision not to renew the Zimbabwean Exemption Permits ("ZEP's") when it expires at the end of December 2022.

The only option to legally circumvent the consequences of the Government's decision, will be for affected foreigners to timeously apply for and obtain the required documentation from DHA.

2. HOW MAY THIS AFFECT YOU OR YOUR BUSINESS IN THE IMMEDIATE FUTURE?

In November 2021, the minister of DHA decided not to renew **Zimbabwean Exemption Permits (ZEPs)** and gave holders thereof a "grace period" of 12 months (until end of December 2022) to either apply for "mainstream visas" or leave the country. There are informal discussions among various stakeholders that the Zimbabwean situation may be extended to other neighbouring countries, but we could not find any confirmation thereof at this stage.

We are aware of some pending court challenges to this decision by the South African Government to scrap permits for Zimbabweans. It is, however, uncertain if it will change the Government's decision and if so what the period of respite may be.

It is our understanding that, as it stands, the grace period of 12 months previously granted will not be extended by the Government and all foreign Zimbabwean employees with the ZEP permits, are expected to leave South Africa by 31 December 2022, unless they have obtained the required documentation prior to 31 December 2022.

The effect of the above will be that employees who have to leave the Country will have major difficulty to access any monies owed to them, if it only becomes available after 31 December 2022. Indications are that the aforesaid, if possible, will take a long time and will be subject to very complicated administrative processes involving various Government departments and even the Reserve Bank. Although not yet confirmed, it may also be that the Government even freezes the ZEP permit holders' South African bank accounts after 31 December 2022, until compliance with the necessary requirements for release of such monies in the accounts, have been met. **As a result of the above, payment of Leave pay, Holiday bonus and Provident Fund monies due the employees concerned, may be adversely affected.**

In anticipation of the grace period expiring for Zimbabwean foreign employees and in order to be pro-active and avoid related and consequential problems, the Council has devised measures and a process that are aimed at avoiding the abovementioned payment problems relating to the affected foreign employees and ensuring they receive the money due to them before they depart by 31 December 2022.

In the event that the Government extends the grace period, although it seems very unlikely, all may return to normal and all payments will proceed in the same manner as previous years. We will keep you updated on developments in this regard.

3. COUNCIL'S MEASURES AND PROCESS TO DEAL WITH THE CANCELLED ZIMBABWEAN EXEMPTION PERMITS (ZEP) EMPLOYEES:

Companies are hereby advised to identify and confirm which members of your workforce may fall under the above-mentioned category of foreigners [Zimbabweans with Zimbabwean Exemption Permits (ZEPs)] in order to effectively use the following FBC measures and process to assist the affected employees. (FBC currently has no clear indication how many Zimbabwean foreigners, or foreigners in general, are employed in our industry. We intend to amend the FBC's system to be able to determine the latter in future.).

3.1 These resolutions ONLY apply to affected foreign employees who are obliged, under the current circumstances, to leave South Africa by the end of 31 December 2022, due to expired Zimbabwean permits.

3.2 The Council will approach the Financial Services Conduct Authority (FSCA) and apply for the waiving of applicable waiting periods, in relation to Provident Fund exit benefit payments for the affected foreign employees.

3.3 The monies we anticipate to be payable to the above-mentioned affected foreign employees prior to 31 December 2022, are for Leave Pay, Holiday Bonus Fund and Provident Fund.

3.4 PAYMENTS FOR CONTRIBUTION YEAR OCTOBER 2021 TO SEPTEMBER 2022

Given the Council's turn-around-times for the processing of returns and payments received from the establishments, you are advised to ensure that all payments and returns, reaches the Council's offices no later than the time frame prescribed in the Main Collective Agreement.

Leave Pay and Holiday Bonus Fund payments

- 3.4.1 **All Leave Pay and Holiday Bonus Fund contributions received from the establishments for the 2021/2022 contribution year (October 2021 to September 2022), which have been received, captured, imported, allocated, approved and paid as per EPIC-template by the establishment to the Council, shall be paid by the Council, to all the employees (affected foreign employees, unaffected foreign employees and other employees) in their bank accounts, as usual.**
- 3.4.2 **Establishments are hereby reminded to make the payments due and submit EPIC returns to Council without any delay in the prescribed manner, in order for the Council to timeously prepare for the payments to all employees, as you do every year. This will also require you to forward to Council, the updated banking details of foreign and other employees to bankingdetails@furnbed.co.za , as requested during the year.**
- 3.4.3 **All employees under this payment period, will be paid as usual in terms of the Main Collective Agreement into their bank accounts on the same dates as every year. However, the extra ordinary payments referred to in paragraph 5 hereunder, will be for the affected foreign employees ONLY, for the period October 2022 to December 2022.**
- 3.4.4 In terms of the Main Collective Agreement, Council is obliged to pay Leave Pay and Holiday Bonus Fund monies every year between 7 and 13 December. In the event that any establishment requires payment on any other specific dates before or after this period, such establishment is required to urgently notify Council of its preferred payment date, timeously in writing to thabiso@furnbed.co.za.

Provident Fund payments to affected foreign employees

- 3.4.5 It is important to note that if the Government proceeds with its intentions, we need to prepare for a possible upwards spike in Provident Fund payments in relation to the affected foreign employees. As with other normal Provident Fund payments, every Provident Fund payment will be preceded by an application by Council for a tax directive from SARS after receipt of the Provident Fund application. **Late payments from establishments will cause serious delays in this regard and may result in non-payments. In the latter instances the establishment concerned may be held liable for any possible cross-border-payment and costs, if such payments are at all possible.**
- 3.4.6 The affected foreign employees must submit the required documents either via e-mail to foreigners@furnbed.co.za or hand deliver to the Provident Fund department of the applicable Council office. The required documents are the Application for Provident Fund Benefits located on Council's website at 20180227154847023_jhb.pdf (furnbed.co.za), a letter from the employer to confirm end of contract, a copy of the affected foreign employee's identification or passport, a recent letter from the bank or bank statement to confirm the affected foreign employee's bank details and the affected foreign employee's South African tax number.

4. **EXTRA ORDINARY PAYMENTS FOR THREE MONTHS OF THE NEXT CONTRIBUTION YEAR, OCTOBER 2022 TO DECEMBER 2022**

Due to the Council's turn-around-time for the processing of returns, fees, levies and contributions received from establishments, it has been resolved as follows:

- 4.1 All payments related to the months of October 2022, November 2022 and December 2022 for Leave Pay monies, Holiday Bonus Fund monies and Provident Fund monies, for the affected foreign employees, must be paid to those affected foreign employees, **directly by the establishment/employer and the establishment must ensure that they are reflected on the Council's returns.**
- 4.2 These extra ordinary payments for the affected foreign employees, must be included in their payment for every week or month, when all the employees are usually paid their normal wages. This way the affected foreign employees will have received all their monies due, by the time they depart from South Africa.
- 4.3 Establishments are requested to notify the Council in writing, of who their affected foreign employees are, by properly identifying their affected foreign employees on a separate communication in the similar way they were identified on the establishment's return, sent to **foreigners@furnbed.co.za**.
- 4.4 Please note that all Council Levies, Dispute Resolution Levies, Death & Funeral contributions and Agency Shop Fees, **must still be paid to the Council by the establishments on behalf of all its employees, including the affected foreign employees, for the period October 2022 to December 2022, to enable Council to perform the necessary calculations, allocations and monitoring.**
- 4.5 The Council also needs to monitor and ensure that the correct direct payments were made by the establishments/employers to the affected foreign employees. These direct payments will be for Leave Pay Fund monies, Holiday Bonus Fund monies and Provident Fund monies. In order for Council to perform this monitoring function, it needs to receive the **proof of payment** timeously from the applicable establishments, for all monies paid to the individual affected foreign employees.
- 4.6 In order for Council to correct your contribution records for the affected foreign employees, acceptable proof of payment will be required for the 3 (three) months (October 2022, November 2022 and December 2022).
- 4.7 In the event that the establishment fails to make the correct payments to the affected foreign employees, the establishment concerned shall remain responsible for the particular payments and may expose the establishment/employer to all the compliance, enforcement and dispute resolution mechanisms of the Council, accompanied by the applicable arbitration awards, penalties and fines.
- 4.8 The exit type for Provident Fund benefit claims will be recorded as "end of contract".
- 4.9 Affected foreign employees have the option to elect or choose to leave their accumulated Provident Fund benefits in the fund, where it will remain invested and maintained as always. These Provident Fund benefits may be applied for at any later stage.

This is a special Circular which deals with some uncertain and unfamiliar circumstances. If there are any of the arrangement referred to or discussed in this Circular which you don't understand or find unclear, please contact any of the designated agents or other senior Council staff members to obtain clarity. Please don't discuss it with junior Council staff members, since they may not have the precise information, you may be in need of.