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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. 72


27 January 2006

Rules, forms and particulars which shall be furnished in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993, as amended).

I, Nerine Beverlee Kahn, Acting Compensation Commissioner, hereby repeal under Section 6 A (b) of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993, as Amended) item 3 of my prescription as published under Notice No. 278 in the following Government Gazette No. 27416 of 24 March 2005 and replace it with the following:

Return of Earnings [Section 82 (1)]

3. "The Return of Earnings shall be on form WAS 8 [ANNEXURE 8] with the particulars required therein, as the case may be."



N. B. Kahn
Acting Compensation Commissioner

IMPORTANT INFORMATION AND GUIDELINES

1. IF THE RETURN IS NOT SUBMITTED TO THIS OFFICE ON OR BEFORE 31 MARCH 2006, A PENALTY MAY BE IMPOSED.
2. KINDLY TAKE NOTE THAT THE RETURN OF EARNINGS, W.As.8, IS MAILED TO ALL REGISTERED EMPLOYERS IN JANUARY EVERY YEAR. THE ONUS RESTS ON THE EMPLOYER TO NOTIFY THIS OFFICE BY THE 15TH FEBRUARY IF THE ANNUAL RETURN OF EARNINGS FORM HAS NOT BEEN RECEIVED. FORMS ARE AVAILABLE ON THE WEBSITE.
3. IF YOU FAIL TO COMPLETE AND SUBMIT THE W.As.8 RETURN OF EARNINGS WITHIN THE PRESCRIBED PERIOD, SECTION 83(6) OF THE ACT EMPOWERS THE DIRECTOR GENERAL TO ESTIMATE THE EARNINGS. A PENALTY, NOT EXCEEDING 10% (TEN PERCENT) OF THE FINAL ASSESSMENT, MAY ALSO BE IMPOSED.

WHO IS AN EMPLOYEE AS REFERRED TO IN PART 2.1

"Employee" means a person who has entered into, or works under a contract of service or apprenticeship or learnership with an employer, whether the contract is expressed or implied, oral or in writing, and whether remuneration is calculated by time or work done, or is in cash or in kind and includes -

- a) a casual / temporary employee employed for the purpose of the employer's business
- b) a working director of a company or member of a body corporate, who has entered into a contract of service or of apprenticeship or learnership with the body corporate, in so far that the employee acts within the scope of his/her employment in terms of such contract. (Excluding shareholders or "silent partners" who are only paid dividends or sharing profits).

A person provided by a labour broker, against payment to a client for the rendering of a service or the performance of work and for which service or work such person is paid by the labour broker, is an employee of the labour broker. The earnings of such persons should not be included in the client's Return of Earnings document.

NB. A sole owner or partners in a business/farming operation are not regarded as "employees" as contemplated by the Act and their earnings should, therefore, not be reflected.

WHAT ARE EARNINGS AS REFERRED TO IN PART 2.2

Earnings are *all* payments made regularly, before any deductions, whether in money or in kind, to employees.

The following lists are not exhaustive, but are intended only to highlight remuneration items for which there may be some doubt as to their inclusion or exclusion.

Included in the gross earnings before any deductions are the following:

- Overtime of a regular nature, (not intermittent or irregular overtime).
- Bonuses of any kind, including incentive bonuses and annual bonuses.
- Commission, even though the amount may vary from month to month.
- The cash value of food and quarters supplied to employees as part of a remuneration package. Cash value of fringe benefits such as a company car, free accommodation or accommodation at a reduced rate, etc.
- Travel and other allowances paid regularly, as part of the package.
- Where the employee is remunerated in accordance with a package of benefits, all items forming part of the package, other than employer contributions such as medical aid contributions.
- Earnings/Drawings paid to working Directors of a Company or Members of a Close Corporation.
Also attach a list with their names, ID numbers and addresses.

Excluded are the following:

- Payments of a reimbursive nature.
- Overtime worked occasionally.
- Payments for specific non-recurring tasks which do not form part of an employee's normal duties.
- *Ex gratia* payments.
- Intangible fringe benefits such as the taxable portion of medical aid/pension contributions by the employer, etc.
- Payments to cover special expenses such as subsistence and travelling costs, lunch and costs for business meetings.
- Travel and other allowances paid occasionally.
- If a director's/member's remuneration is profit sharing, the Director/Member is not an employee in terms of the Act.

FINAL EARNINGS

If your activities have ceased, indicate the date of cessation on the front page and declare the final earnings paid to that date.

MINIMUM ASSESSMENT (SECTION 83(2)(b))

As a result of continuously rising costs, the 2005 - 2006 minimum assessment has been increased to R 375 per annum.

LETTER OF GOOD STANDING

This letter can be obtained once the employer has complied with the requirements of the Act, including:

- a) Submitting the latest return of earnings.
- b) Assessment has been paid or instalments have been arranged.
- c) Application should be made in good time (one week) preferably on a letterhead, in writing.
- d) Please quote the registration number, as well as telephone and fax numbers with dialling code.
- e) Applications on behalf of the employer by Consultants or Agents should be in writing and accompanied by a Power of Attorney.
- f) Faxed requests are acceptable. **The applicable fax numbers are 012 323-5433/323 0262.**
- g) Tampering with the contents of these Letters is a serious offence.

WEBSITE ADDRESS

The Compensation for Occupational Injuries and Diseases Act, 1993 and Amendments are available on the website at <http://www.labour.gov.za>