



BERMUDA

PUBLIC TREASURY (ADMINISTRATION AND PAYMENTS) (TEMPORARY
UNEMPLOYMENT BENEFIT) (NO. 5) REGULATIONS 2021

BR 54 / 2021

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WHEREAS COVID-19 is a public health threat globally;

AND WHEREAS COVID-19 presents an unusual disruption to the Bermuda economy;

AND WHEREAS the Government has expressed its commitment to provide access to temporary unemployment benefits to individuals directly impacted by COVID-19;

The Minister of Finance, in exercise of the power conferred by section 33 of the Public Treasury (Administration and Payments) Act 1969, makes the following Regulations:

PUBLIC TREASURY (ADMINISTRATION AND PAYMENTS) (TEMPORARY UNEMPLOYMENT BENEFIT) (NO. 5) REGULATIONS 2021

Citation

1 These Regulations may be cited as the Public Treasury (Administration and Payments) (Temporary Unemployment Benefit) (No. 5) Regulations 2021.

Interpretation

2 In these Regulations—

“Act” means the Public Treasury (Administration and Payments) Act 1969;

“applicant” means an individual who makes an application under these Regulations;

“business” means a business as defined in regulation 4(7);

“employee” has the meaning given by section 4(1) of the Employment Act 2000; and “employed” and “employment” shall be construed accordingly;

“in writing” includes by electronic communication;

“Minister” means the Minister of Finance;

“recipient” means a person who is in receipt of unemployment benefit under the Act pursuant to these Regulations;

“permanent secretary” means the permanent secretary of the Ministry responsible for financial assistance;

“remuneration” has the meaning given in section 7 of the Payroll Tax Act 1995;

“substantially reduced hours” means 50% or less of the employee’s normal hours of employment;

“unemployment benefit” has the meaning given in regulation 3;

“Unemployment Insurance Fund” means the fund established under section 10B of the Act.

Unemployment benefit

3 (1) For the purposes of these Regulations, “unemployment benefit” means the sum of money approved for payment under these Regulations to an individual whose employment has been affected as a result of COVID-19 from the Unemployment Insurance Fund.

(2) The “unemployment benefit” is a temporary benefit to be paid to an eligible individual for a maximum period of sixty days in accordance with regulation 6(2).

[Regulation 3 paragraph (2) amended by BR 64 / 2021 reg. 2 effective 29 April 2021; Regulation 3 paragraph (2) amended by BR 70 / 2021 reg. 2 effective 8 May 2021; Regulation 3 paragraph (2) amended by BR 77 / 2021 reg. 2 effective 1 June 2021; Regulation 3 paragraph (2) amended by BR 95 / 2021 reg. 2 effective 19 June 2021]

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Persons qualified to apply for unemployment benefit

4 (1) An individual is qualified to apply for, and eligible to receive, unemployment benefit if he satisfies the criteria set forth in paragraphs (2) to (4) below and—

- (a) is or was an employee of a business (as defined in paragraph (7)) that has been directly impacted as a result of COVID-19; or
- (b) is a self-employed individual whose business (as defined in paragraph (7)) has been directly impacted as a result of COVID-19,

during the period beginning on 13 April 2021 and ending on 12 June 2021.

(2) An individual referred to in paragraph (1) is qualified to apply for unemployment benefit if he is 18 years of age or older and—

- (a) he possesses Bermudian status;
- (b) he is the spouse of a person who possesses Bermudian status;
- (c) he is a permanent resident as provided for in section 23 of the Bermuda Immigration and Protection Act 1956; or
- (d) he does not fall within subparagraph (a), (b) or (c), and has a valid work permit as defined in the Bermuda Immigration and Protection Act 1956 and paragraph (4) applies.

(3) A person living in Bermuda on the date these Regulations come into force is qualified to apply for unemployment benefit where, as a direct result of COVID-19—

- (a) he is laid off work;
- (b) he is self-employed, and without income or his income has been substantially reduced, and is registered with the Office of the Tax Commissioner;
- (c) subject to paragraph (4), his employment has been terminated;
- (d) he is engaged as an employee, but is for the time being working substantially reduced hours.

(4) A person to whom paragraph (2)(d) applies is not qualified to apply for unemployment benefit even if his employment has been terminated, unless it is shown that he is prevented at the time of the application, due to travel restrictions directly related to COVID-19, from departing Bermuda.

(5) A person who is receiving financial assistance under the Financial Assistance Act 2001 is not qualified to apply for unemployment benefit.

(6) A person who is receiving supplemental unemployment benefit under the Public Treasury (Administration and Payments) (Supplemental Unemployment Benefit) Regulations 2020 is not qualified to apply for unemployment benefit.

(7) For the purposes of these Regulations—

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“business” means a business other than a bar, a club, gyms and other sports clubs, an indoor place of public entertainment or a retail store that is a permitted business;

“indoor place of public entertainment” means a place included in regulation 5(c) of the Public Health (COVID-19 Emergency Powers) (Stay at Home) Regulations 2021.

[Regulation 4 paragraph (1) amended by BR 64 / 2021 reg. 3 effective 29 April 2021; Regulation 4 paragraph (1) amended by BR 70 / 2021 reg. 3 effective 8 May 2021; Regulation 4 paragraph (1) amended by BR 77 / 2021 reg. 3 effective 1 June 2021; Regulation 4 paragraph (1) amended by BR 95 / 2021 reg. 3 effective 19 June 2021]

Powers of Minister

5 (1) In the exercise of his functions under section 10BA of the Act to direct sums to be paid to an individual for unemployment benefit, the Minister may consult with the Minister responsible for Workforce Development.

(2) The Minister may authorise an officer of his Ministry or department to exercise his powers under section 10BA of the Act and shall furnish such officer with an authorisation signed by him.

(3) An officer exercising powers by virtue of an authority under this regulation shall, if so required, produce evidence of his authorisation.

Scope of unemployment benefit; duration

6 (1) The unemployment benefit shall be calculated at 60% of an individual's remuneration; provided that the maximum unemployment benefit payment to an individual shall not exceed \$500 per week.

(2) An individual is eligible to receive unemployment benefit shall receive unemployment benefit for a maximum period of sixty days if he is or was an employee of, or self employed with respect to a business (as that term is defined in regulation 4(7), during the period beginning on 13 April 2021 and ending on 12 June 2021.

(3) When making a determination under these Regulations for the purposes of paragraph (1), the permanent secretary shall take into account whether the applicant may be receiving compensation from his employer.

(4) With consideration being given to the best interests of Bermuda, the permanent secretary, in consultation with the Minister, shall provide the unemployment benefit to individuals with consideration being given to an individual's circumstances.

[Regulation 6 paragraph (2) amended by BR 64 / 2021 reg. 4 effective 29 April 2021; Regulation 6 paragraph (2) amended by BR 70 / 2021 reg. 4 effective 8 May 2021; Regulation 6 paragraph (2) amended by BR 77 / 2021 reg. 4 effective 1 June 2021; Regulation 6 paragraph (2) amended by BR 95 / 2021 reg. 4 effective 19 June 2021]

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Application for unemployment benefit

7 (1) An application shall be made in such form as may be determined by the permanent secretary, in consultation with the Minister, for the purposes of these Regulations.

(2) An application shall be submitted to the permanent secretary no later than 30 June 2021.

(3) The applicant shall submit all of the information required by these Regulations and the completed form.

(4) In respect of his application, an applicant shall provide the following information—

- (a) for the purposes of regulation 4(2), documentary proof that he falls within the relevant category;
- (b) a letter from his employer or former employer confirming his current employment status and most recent remuneration;
- (c) a copy of the applicant's photographic identification which includes a valid driver's licence, passport or other valid Government-issued identification; and
- (d) where the applicant is self-employed, documentation showing—
 - (i) payroll tax returns for his last two quarters; or
 - (ii) that he has, in connection with his application, registered with the Office of the Tax Commissioner.

(5) With the approval of the permanent secretary and in such form as the permanent secretary may determine, an employer that is a business with employees who are each qualified under regulation 4 to apply for unemployment benefit, may submit—

- (a) all information and documentation required with respect to an application for unemployment benefit; and
- (b) all information and documentation with respect to the employment status or remuneration and any other information in respect of a recipient of unemployment benefit.

(6) Information and documentation submitted by an employer pursuant to paragraph (5) is deemed to be an application made for unemployment benefit by each qualified individual to which the information and documentation so submitted relates.

(7) The applicant or his employer shall provide any further information or documentation that is reasonably required by the permanent secretary to support the application.

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(8) An application shall not be considered complete for the purposes of regulation 8 until that further information or documentation has been supplied to the permanent secretary in writing.

[Regulation 7 paragraph (2) amended by BR 64 / 2021 reg. 5 effective 29 April 2021; Regulation 7 paragraph (2) amended by BR 77 / 2021 reg. 5 effective 1 June 2021; Regulation 7 paragraph (2) amended by BR 95 / 2021 reg. 5 effective 19 June 2021]

Decision of permanent secretary

8 (1) The permanent secretary shall consider completed applications, and make a decision whether to approve or refuse to approve the application.

(2) The permanent secretary shall not approve an application for unemployment benefit unless he is satisfied that the applicant fulfils the qualifications and eligibility criteria for unemployment benefit.

(3) Where the permanent secretary approves an application, he shall first inform the Minister in writing of the proposed sum of the unemployment benefit, the duration of the benefit, any conditions attached to the benefit, and any other relevant matter.

(4) The permanent secretary shall also notify the applicant of his decision and, if the application is refused, give the reasons for the refusal and advise the applicant of his right to appeal the decision.

(5) Where the permanent secretary approves an application, he shall inform the applicant in writing of the amount of his unemployment benefit, the duration of the benefit, any conditions attached to the benefit, and any other relevant matter.

(6) Pursuant to such notification from the permanent secretary, the Minister shall notify the Accountant General—

- (a) of the sum of unemployment benefit to be provided to the applicant; and
- (b) to pay the unemployment benefit—
 - (i) directly to the individual applicant or recipient; or
 - (ii) if the Minister so directs, via the individual recipient's employer, or former employer, for payment, in accordance with regulation 9(2), by the employer to each approved applicant or recipient.

Duties of employer where unemployment benefit is paid via the employer

9 (1) Any sums that are paid via an employer pursuant to regulation 8(6)(b)(ii) for unemployment benefit are held by the employer on trust for each individual employee, or former employee, respectively approved to receive an unemployment benefit under these Regulations.

(2) Within five business days of receipt of the sums referred to in paragraph (1), the employer shall pay the sum approved by the permanent secretary for unemployment benefit to each individual recipient without any deduction.

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(3) The employer shall account properly and promptly for all sums paid via the employer for unemployment benefit and, in particular, shall ensure that—

- (a) proper accounts and records are kept in respect of all sums comprising unemployment benefit due to each individual recipient;
- (b) sums belonging to a recipient approved for unemployment benefit and money belonging to the employer are kept separately identifiable from one another;
- (c) all payments to each individual recipient approved for unemployment benefit can be accurately identified and traced; and
- (d) any sum belonging to one recipient of unemployment benefit is not used for another recipient or another employee, or former employee, or for any other purpose.

(4) The employer shall prepare and submit to the permanent secretary, in such form as the permanent secretary may determine, every two weeks, or such longer period as may be required by the permanent secretary after the first receipt of any sums for unemployment benefit via the employer, a report containing—

- (a) a record of every payment to each individual recipient approved for unemployment benefit in respect of whom the employer has received a sum for unemployment benefit; and
- (b) such other additional information with respect to such sums for unemployment benefit as the permanent secretary may direct in writing.

(5) Where the permanent secretary, in respect of the unemployment benefit paid via the employer requests any information and explanations from an employer, the employer shall comply with that request as soon as practicable thereafter.

(6) The employer shall retain accounting records in relation to all sums paid via the employer for unemployment benefit and due to recipients employed or formerly employed by the employer for at least three years from the date of the payment to which it relates.

(7) The employer commits an offence where, without reasonable excuse, the employer—

- (a) fails to comply with this regulation or any direction or request pursuant to, this regulation; or
- (b) obstructs the permanent secretary or any member of his staff or any other public officer in carrying out their functions under or pursuant to these Regulations,

as regards such sums for unemployment benefit paid via the employer.

(8) An employer who commits an offence under paragraph (7) is liable on summary conviction to a fine not exceeding \$5,000, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

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(9) Where an offence under these Regulations has been committed by a body corporate is proved to have been committed with the consent or connivance on the part of any manager, permanent secretary, secretary or other officer of the body corporate, such person, as well as the corporate body, shall be liable to be proceeded against and punished accordingly.

(10) In the event of winding up of the business of an employer via which any sum for unemployment benefit has been paid, section 236(1)(b) of the Companies Act 1981 shall apply with respect to any sums for unemployment benefit at the time of the winding up held by the employer, as if those sums were wages or salary referred to in that section.

Conditions applicable to unemployment benefit

10 (1) Every unemployment benefit approved under these Regulations shall be subject to the conditions specified in paragraph (2) and any other conditions that may reasonably be imposed by the permanent secretary under this regulation.

(2) It shall be a condition of every unemployment benefit granted that the recipient—

- (a) shall notify the permanent secretary in writing forthwith—
 - (i) of any change in his circumstances which, had he not been in receipt of an unemployment benefit, would disqualify him from applying for such benefit;
 - (ii) of any change in his circumstances which would make him ineligible to receive, or continue to receive, an unemployment benefit;
 - (iii) if regulation 4(2)(d) applies, of his intention to leave Bermuda and the proposed date of departure;
- (b) shall provide such information and produce such documents as the permanent secretary may, from time to time, reasonably require; and
- (c) shall, if the Minister so requires, attend at such time and place as the permanent secretary may require to be examined as to his circumstances.

(3) A recipient who, without reasonable cause, refuses or fails to comply with a condition under paragraph (2), is in breach of the condition and may be subject to the provisions of regulation 12 or 13.

(4) For the purposes of this regulation, a recipient, or the employer, where applicable, shall provide to the permanent secretary at such time as may be determined by the permanent secretary, a letter confirming his employment status at the date thereof.

Periodic review of unemployment benefit

11 (1) The permanent secretary may, on new facts being brought to his notice, or if he is satisfied that the decision was based on a misrepresentation as to some material fact, review any decision given by him in relation to a person's unemployment benefit and upon review may vary, suspend or cancel a person's unemployment benefit.

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(2) Before he makes a decision under paragraph (1), the permanent secretary shall first give the recipient an opportunity to make representations.

(3) The permanent secretary, with the approval of the Minister, may require a recipient to repay any sum of money improperly paid under an unemployment benefit (“overpayment”) as a result of non-disclosure of facts, misrepresentation or for any other cause.

(4) The permanent secretary may, with the approval of the Minister, waive the overpayment or may require the recipient to pay a reduced amount if he is satisfied that a recipient has exercised due care and diligence to avoid the overpayment.

(5) The permanent secretary shall require an employer via whom any sum of unemployment benefit is paid for an individual recipient who is an employee or former employee of the employer, to repay any sum of money—

- (a) improperly paid via the employer (“overpayment”);
- (b) improperly paid as a result of non-disclosure of facts, misrepresentation or for any other cause; or
- (c) that the employer failed to pay to the applicant approved for, or recipient of, unemployment benefit.

(6) Where any sum is required to be repaid by a recipient under this regulation, the Minister may recover such sum as a debt owing to the Government in any court of competent jurisdiction.

(7) For the purposes of this regulation, a recipient, or the employer, where applicable, shall provide to the permanent secretary at such time as may be determined by the permanent secretary, a letter confirming the recipient’s employment status at the date thereof.

Suspension or cancellation of unemployment benefit

12 (1) The permanent secretary shall suspend or cancel an unemployment benefit where—

- (a) the recipient ceases to be eligible to receive an unemployment benefit pursuant to these Regulations;
- (b) the recipient fails to provide the permanent secretary with the information reasonably required to enable the permanent secretary to determine his continued eligibility for unemployment benefit or the amount of the unemployment benefit;
- (c) the permanent secretary is satisfied that the recipient has been substantially employed during the relevant period or part thereof, and the recipient has, without reasonable excuse, failed to provide documentation as to the hours that he has worked;
- (d) a person to whom regulation 4(2)(d) applies is no longer restricted from departing Bermuda.

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(2) If the permanent secretary proposes to suspend or cancel an unemployment benefit under these Regulations, the permanent secretary—

- (a) shall give the recipient a notice of his intention and the reasons therefor;
- (b) shall specify a reasonable period (which may not be less than seven days) within which the recipient may make representations to the permanent secretary;
- (c) where representations are made under subparagraph (b), shall take them into account in deciding whether to suspend or cancel a recipient's unemployment benefit.

(2A) Unless the contrary is shown, the date of service of a notice under paragraph (2)(a) to a recipient is deemed to be the seventh day after which it was sent to the email address provided by, or in respect of, the recipient.

(3) A decision of the permanent secretary under this regulation shall—

- (a) be in writing;
- (b) give reasons for the permanent secretary's decision to suspend or cancel the unemployment benefit to which the notice relates;
- (c) give an indication of the right to appeal the decision to the Minister.

[Regulation 12 paragraph (1) amended, and paragraph (2A) inserted by BR 128 / 2021 reg. 2 effective 6 August 2021]

Investigation

13 The permanent secretary may—

- (a) investigate and verify any statements made in an application; or
- (b) investigate and examine the circumstances of an applicant or a recipient in relation to his eligibility, or continued eligibility, for unemployment benefit or for the amount of the unemployment benefit.

False information

14 (1) Any person who for the purposes of the Act and these Regulations knowingly makes any false statement or knowingly provides any false information commits an offence.

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine of \$1,500 or imprisonment for six months or to both such fine or term of imprisonment.

Appeals to Minister

15 (1) An applicant for, or recipient of, unemployment benefit, who is aggrieved by a decision of the permanent secretary—

- (a) not to grant an unemployment benefit under regulation 8;
- (b) to suspend or cancel his unemployment benefit under regulation 12; or

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- (c) regarding any condition subject to which unemployment benefit is granted or which is thereafter attached to such unemployment benefit or any variation of such condition,

may within 21 days from the date of such refusal or suspension or cancellation, or imposition or variation of the condition, or such period as the Minister may allow, appeal in writing to the Minister.

(2) After considering an appeal under paragraph (1), the Minister may if he thinks fit, vary the decision of the permanent secretary and such variation shall take effect on such date as the Minister may determine.

(3) For the purposes of an appeal under paragraph (1), the Minister shall, at the time of giving his decision, or not later than five working days after the date on which he makes a decision, give reasons, in writing, for the decision.

(4) The Minister may give his decision as soon as possible after considering the appeal but not later than five working days after receipt of the notice of appeal.

(5) When a recipient gives notice of appeal to the Minister, the Minister may suspend the implementation of the decision of the permanent secretary, pending the outcome of the appeal.

Permanent secretary to keep records

16 For the purposes of these Regulations, the permanent secretary shall keep a copy of each application with the following information relating to it—

- (a) whether it was approved or refused;
- (b) the amount (if any) given to the applicant; and
- (c) the reasons given if the application was refused,

and the permanent secretary shall keep copies of documentation submitted in support of an application.

Made this 18th day of April 2021

Minister of Finance

[Operative Date: 18 April 2021]

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[Amended by:

BR 64 / 2021

BR 70 / 2021

BR 77 / 2021

BR 95 / 2021

BR 128 / 2021]